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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *

COMMONWEALTH OF MASSACHUSETTS

VS.

Indictment No.
2282CR00117

KAREN READ

* * * * *

Day 27 - Trial with Jury
Before the Honorable Beverly Cannone

APPEARANCES:

For The Commonwealth:

BY: Adam Lally
Laura McLaughlin
Assistants District Attorney

For Karen Read:

BY: Alan Jackson
David Yannetti
Elizabeth Little
Attorneys at Law

Norfolk Superior Courthouse
Dedham, Massachusetts
Thursday, June 6, 2024

Paula M. Mills
Retired Certified Court Reporter
and Court Transcriptionist

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WITNESS:	DIRECT	CROSS	REDIRECT	REXCROSS
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P R O C E E D I N G S

June 6, 2024

(Court in session at 9:08 a.m.)

(Defendant present. Jury not present.)

THE COURT: Could I see counsel at sidebar?

(Whereupon, there was a sidebar conference as follows:)

THE COURT: Hi. A couple of things about the scheduling and exhibits. One thing I'm going to do this morning is I'm going to strike Exhibit 463, the receipts. Mr. Jackson is right that there has not been an appropriate foundation laid. The others came in through the Waterfall through the bartender. We need somebody from there.

MR. LALLY: If I could just on that, I had Jean DeMulis on the witness list who I intended to call. When I talked to counsel about that, whether or not I needed to call that person in order to get in the video and/or the receipts, I was told that that was fine, and they stipulated to that. So that is why I'm a little --

MR. JACKSON: Let me talk to co-counsel about that.

THE COURT: Okay.

MR. JACKSON: Perhaps we can -- I do want to

1 avoid another witness if we can.

2 THE COURT: All right.

3 MR. JACKSON: My biggest issue was Bukhenik
4 reading from the receipts as if they are his --

5 THE COURT: No. So I went back and listened
6 again last night. So he read the first two Tito's
7 and then he read Coors Light before you objected.

8 MR. JACKSON: Right.

9 THE COURT: When you objected, I immediately
10 sustained it. And then I thought you were
11 objecting for that reason; it was in, and you came
12 to sidebar, and you came to sidebar and said you
13 thought it was already in evidence and I know it
14 wasn't in evidence. And then you raised the
15 authenticity argument.

16 So you can talk about that, but it brings me
17 to an important point. This is the first case I've
18 ever tried as a judge where I don't really have
19 access to the exhibits. They seem to be back at
20 the D.A.'s table, and I understand it's for
21 organizational purposes.

22 There was a time yesterday after that I was
23 thinking, I haven't even read this. What I
24 remember seeing -- this was a grand jury exhibit,
25 right?

1 MR. LALLY: Yes.

2 THE COURT: I remember seeing -- I don't
3 remember seeing all of the last page that I just
4 saw this morning when I took this out of where it
5 was, the other gentleman's receipt or something.
6 The bottom line is I need access to the exhibits so
7 that if I have a question on it, I can look at it
8 when Madam Clerk is marking exhibits or when I've
9 seen the video for the fifth time or something.
10 And I don't have that yet, and it's troublesome to
11 me.

12 So I would like all of the paper exhibits for
13 each day to be held with the clerk where they're
14 supposed to be held during the day. And, if you
15 all need them, the clerk will hand them to you. If
16 I need them, the clerk can just hand them back to
17 me. At the end of the day, I have no problem -- I
18 think it was great that the Commonwealth seems to
19 be organizing these, which seems like a big job for
20 you.

21 This is 463. So how many more do we have? Do
22 we have another 100 or 200 more exhibits?

23 MR. LALLY: In total, I don't know if it's
24 100, but it's probably somewhere between 15 and 75.

25 THE COURT: Okay. I get it. There are a lot

1 of exhibits. But I would have appreciated having
2 this yesterday. I do take them from the witness,
3 but oftentimes I take them from the witness and we
4 come over here. I don't really have a chance to
5 look at them.

6 Those were my two points from this morning.
7 Can you figure this out right away?

8 MR. LALLY: In ten seconds.

9 THE COURT: Okay. I'll wait.

10 Tim? You can line them up.

11 THE COURT OFFICER: Yes. Your Honor.

12 MR. JACKSON: I don't want Mr. Lally to have
13 to call another witness to lay the foundation,
14 which I'm sure he can. We'll just stipulate to it.
15 Again, my only issue was Sergeant Bukhenik, who has
16 no personal knowledge of any of the data on it.
17 He's just reading from it. He spent like 15
18 minutes reading the Tito's.

19 THE COURT: No. And when you objected to it,
20 I sustained it. That was prior to it coming in.

21 MR. JACKSON: Right. So I don't think that it
22 needs to be stricken. I mean, I --

23 THE COURT: All right. So you are not
24 objecting to its authenticity. You are
25 withdrawing your objection to its authenticity that

1 you raised yesterday?

2 MR. JACKSON: Correct.

3 THE COURT: Okay.

4 MR. JACKSON: That can be done. That's great,
5 though. And the other thing, I will tell the jury
6 today that we are off on Tuesday. They want to
7 know where we are. And now I asked the court
8 officer to ask the jurors -- I have my sentencing
9 in Lopes on the 21st. I may end up continuing
10 that, which I know causes all kinds of problems for
11 the D.A.'s office, and I regret that. We can't
12 keep these jurors any longer. I'm afraid they are
13 going to go right into the 4th of July.

14 MR. JACKSON: That's my fear.

15 THE COURT: All right. So we will figure out
16 scheduling. But I did ask the court officers to
17 ask the jurors, if they were told the 21st was a
18 day off, ask if they'd be available and we'll know
19 that at the end of the day.

20 So before we break at 12 and give the
21 Commonwealth and the defense to tell me a ballpark
22 of when they think the jury will get this case for
23 deliberation.

24 MR. JACKSON: Will do.

25 MS. MC LAUGHLIN: Your Honor, there are four

1 exhibit books that contain all of the exhibits. Do
2 you want them up here?

3 THE COURT: I don't think we have room for all
4 of them.

5 MS. MC LAUGHLIN: Can they be maintained in
6 that corner or do you want --

7 THE COURT: Sure. Wherever you are. But
8 whatever comes in today stays with the clerk from
9 today. And, at the end of the day -- I don't mean
10 the bags of evidence. It's the papers and
11 photographs, if you don't display all of them.

12 MS. MC LAUGHLIN: Would it be helpful to
13 provide copies to the Court in advance when we know
14 certain things are coming in?

15 THE COURT: If you only have 53 exhibits
16 coming in from here on, that would make things
17 maybe easier, and I would just keep them here.

18 MS. MC LAUGHLIN: Okay.

19 THE COURT: It's problematic when I want to
20 find something to look at, which happens a lot.

21 MS. MC LAUGHLIN: I understand.

22 THE COURT: All right. Are we all set?

23 MR. LALLY: We are. So let us know. Talk
24 during the break about when you think the jury will
25 get the case.

1 MR. YANNETTI: Will do.

2 (Whereupon, the sidebar conference concluded.)

3 THE COURT: All right. You can bring them in.

4 (Whereupon, the jury is escorted into the courtroom
5 and seated in the jury box at 9:15 a.m.)

6 THE CLERK: 22-117, the Commonwealth versus
7 Karen Read.

8 Could I have the witness, please.

9 THE COURT: Good morning again, counsel, and
10 Ms. Read. Good morning jurors. We appreciate your
11 patience. Giving us this time actually helps
12 streamline things today. So we appreciate that.

13 I do have to ask you those three questions.
14 Were you all able to follow the instructions and
15 refrain from doing any independent research or
16 investigation into this case since we left?

17 Were you also able to follow the instructions
18 and refrain from discussing this case with anyone
19 since we left yesterday?

20 Did anyone happen to see, hear or read
21 anything about this case since we left yesterday?

22 Thank you very much. Everybody answered those
23 questions appropriately.

24 Okay. Can we have Sergeant Bukhenik, please.

25 Whereupon,

YURIY BUKHENIK, Resuming

having been first duly sworn, was examined and testified under oath as follows:

THE COURT: All right, Mr. Lally. Whenever you're ready.

MR. LALLY: Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION

BY MR. LALLY:

Q Good morning, sir.

A Good morning, sir.

Q To circle back just to a couple of things from your testimony from yesterday.

Going back to the video that you reviewed from both C.F. McCarthy's and the Waterfall, in total from those two videos, how many drinks did you observe the defendant consuming over her time there?

A The video shows nine drinks being consumed by the defendant.

Q And that's between when she arrives at C.F. McCarthy's until the time that she leaves the Waterfall; is that correct?

A That is correct.

Q And, if I could turn your attention to the Ring videos from One Meadows Avenue, Mr. O'Keefe's residence, from the videos that you observed -- well,

1 let me ask you first as far as do you know how those
2 cameras work as far as when they turn on and when they
3 turn off?

4 A My understanding is that Ring surveillance
5 video is triggered to be recorded through motion. So
6 if the camera detects motion which is constantly live
7 monitoring and motion is detected, then that video is
8 captured to a cloud-based system that retains that
9 footage.

10 Q And, from your review of those videos, what
11 kind of motion would set those off, like what kind of
12 things would be recorded from the driveway camera
13 video?

14 A The activity in the driveway such as a person
15 walking through, a bird landing, a vehicle pulling in,
16 individuals moving around in the driveway and so forth.

17 Q The search warrant that was applied for was
18 any and all videos between January 24th and January
19 30th, correct?

20 A For one of the search warrants, that's
21 correct, yes.

22 Q And, with respect to that time frame, what, if
23 any, activity based on information that you had
24 received was not available or was not shown on those
25 Ring videos?

1 A The data returned had video that would have
2 been captured from the defendant arriving home after
3 midnight on the 29th after she dropped Mr. O'Keefe off
4 at 34 Fairview Road. That video was not present in the
5 data that was returned from Ring.

6 Q What, if any, other video in addition to that
7 one was not present?

8 A There is also video missing from the
9 defendant, showing Ms. McCabe and Ms. Roberts, the
10 damage to her right rear taillight.

11 Q And what, if any, followup or what, if any,
12 inquiry was then done with regard to Ring as far as
13 those types of videos or deletion or how those videos
14 could not be present?

15 A Correspondence with Ring produced information
16 that --

17 MR. JACKSON: Objection.

18 THE COURT: Sustained.

19 BY MR. LALLY:

20 Q Let me ask this first. Was there followup
21 with Ring in regard to those videos?

22 A Yes, there was.

23 Q And was there ever anything produced with
24 regard to those videos or those time frames from Ring?

25 A No, there was not.

1 Q If I could turn your attention over to your
2 time in Dighton just in reference to subsequent to
3 that, later on. What, if anything, did you receive or
4 what, if anything, did you request or what, if
5 anything, did you receive from the Dighton Police in
6 regard to January 29th, 2022?

7 A I communicated with the Dighton Police
8 Department, requesting documentation from their
9 office's call for service at our request and log notes,
10 logs from their dispatching center, as well as any
11 reports that would document their activity if such
12 reports existed.

13 Q What, if any, information did you receive in
14 relation to that?

15 A I received a log note or a log printout from
16 their CAD system, and I received a report authored by
17 Officer Barros.

18 Q And did you also receive any 911 calls?

19 A Yes.

20 Q And who was the party as far as the 911 caller
21 in regard to those 911 calls that you received?

22 A Mr. Read.

23 Q And, again, just for clarity purposes, that's
24 the defendant's father; is that correct?

25 A That is correct.

1 Q And that's from the morning of January 29th;
2 is that also correct?

3 A That is correct.

4 Q Now, sir, if I could turn your attention to
5 February 3rd, 2022. At some point that morning, where
6 did you go?

7 A During the morning hours of February 3rd,
8 we planned to meet at 34 Fairview Road. Myself,
9 Trooper Proctor and Trooper DiCicco arrived at that
10 location in order to conduct a secondary search of the
11 area as the temperatures were turning and the snow was
12 melting naturally. We decided to do another search for
13 articles that were now, we realized and learned, were
14 missing and could be of evidentiary value and aid in
15 the investigation.

16 Q And with respect to going to 34 Fairview Road,
17 what, if any, tools or what, if anything, did you bring
18 with you, you and the other troopers, in regard to
19 conducting that secondary search?

20 A I requested that troopers bring shovels,
21 rakes, anything like gardening items that would help
22 them to dig through the snow and locate any missing
23 items.

24 Q And, as far as the temperature change that
25 you're talking about, how precipitous a change are we

1 talking about?

2 A The temperatures went above freezing. So the
3 snow did begin to melt, and it was significantly warmer
4 compared to the 18 degrees the night of the incident.

5 Q Now, you mentioned items of evidentiary value
6 that you had learned of and were looking for. What, if
7 any, clothing items of Mr. O'Keefe were you looking for
8 specifically on February 3rd?

9 A We were specifically looking for Mr. O'Keefe's
10 baseball cap.

11 Q And, in addition to yourself, Trooper Proctor
12 and Trooper DiCicco, who, if anyone, else did you
13 notify or who, if anyone, from any other unit within
14 the state police responded that day, as well?

15 A We requested assistance of the Crime Scene
16 Services Section of the Massachusetts State Police.
17 And Trooper Evan Brent showed up to assist us with
18 documentation of the location and the evidence that we
19 were hopefully going to find.

20 Q And, from those, Trooper Brent arrived and
21 took photographs; is that correct?

22 A That's correct.

23 Q And when was it that Trooper Brent arrived in
24 relation to your arrival?

25 A I believe he was already present when we

1 pulled up, but I'm not sure to his exact time of
2 arrival.

3 Q And, with regard to that day, what, if
4 anything, in general terms, what, if anything, were you
5 able to locate and where was it, generally speaking?

6 A We located Mr. O'Keefe's baseball hat. We
7 located a drinking straw from a cocktail glass. We
8 located items of plastic, colored plastic and other
9 shards of colored plastic at the location. All those
10 items were located on the grass portion of the yard
11 near the flagpole at 34 Fairview Road.

12 MR. LALLY: And, Your Honor, may I approach?

13 THE COURT: Yes.

14 MR. LALLY: Your Honor, may I have a moment?

15 THE COURT: Yes.

16 BY MR. LALLY:

17 Q Sergeant, I'm going to show you a series of
18 photos. I'm going to break this up a little bit.

19 THE COURT: Mr. Lally, with your back to the
20 jurors, I'm sure they can't hear you.

21 MR. LALLY: My apologies, Your Honor.

22 BY MR. LALLY:

23 Q So, sir, what I'm going to do is I'm going to
24 show you some photographs, a series of them, and I am
25 going to break them up a little bit just to make it

1 hopefully quicker.

2 Sir, first I'm going to show you 10
3 photographs and ask you if you could view those and
4 look up when you're finished.

5 A (Witness complies.)

6 Q Do you recognize those, sir?

7 A Yes, I do.

8 Q And what do you recognize those to be?

9 A Those are the photographs documenting the
10 items located at 34 Fairview Road on the grass as the
11 snow receded through the melting temperatures that were
12 revealed to be positioned in the grass.

13 Q And what's contained in those photographs, is
14 that a fair and accurate portrayal of what you observed
15 on the front lawn area of 34 Fairview Road on February
16 3rd?

17 A Yes, it is.

18 MR. LALLY: Your Honor, may I approach?

19 THE COURT: Yes.

20 MR. LALLY: The Commonwealth would seek to
21 introduce them as the next exhibits.

22 THE COURT: Any objection, Mr. Jackson?

23 MR. JACKSON: No objection.

24 (Whereupon, photographs were entered and marked
25 Exhibits No. 468 through 477 in Evidence.)

1 THE COURT REPORTER: Exhibits 468 through 477,
2 Your Honor.

3 THE COURT: Thank you.

4 MR. LALLY: And, Your Honor, with the Court's
5 permission if I could just ask to publish some of
6 these photos for the jury?

7 THE COURT: Yes.

8 MR. LALLY: Just one moment, Your Honor.

9 And, Ms. Gilman, if I could start with
10 Photograph 7659.

11 BY MR. LALLY:

12 Q And, Sergeant, do you recognize what's up on
13 the screen and what has now been marked as Exhibit 468?

14 A I do.

15 Q And, if you could, just for orientation
16 purposes, describe for the jury whereabouts in relation
17 to 34 Fairview Road we are in this picture?

18 A Standing on the street at Fairview Road, we
19 are looking at the left side of the yard. In the top
20 right corner, you can tell that there is a flagpole
21 depicted in that photograph and a telephone switch box
22 that's open on the left side which is on the border of
23 34 Fairview Road.

24 Q And if I could ask, from the photographs, if
25 you know, the grass that's visible on the front lawn

1 area of 34 Fairview Road, is that from a natural
2 melting process or is that from some of the tools that
3 you and the other troopers used to assist you in your
4 secondary search?

5 A The reason that grass was exposed is due to
6 processing of the scene and having the snow being moved
7 away from the location and then natural melting process
8 taking place on top of it.

9 As you can tell, other portions of the yard is
10 covered in snow and the grass has not revealed itself
11 just yet.

12 Q Now, as far as the photographs of various
13 items that were located on this date of February 3rd,
14 the photographs that were taken, were they taken as
15 they lay or were they touched or manipulated in any way
16 prior to the photograph being taken?

17 A The items photographed were discovered as soon
18 as we realized what is being discovered through the
19 digging and excavation process. They would then
20 photograph instantly. Certain items were revealed
21 naturally through the melting process and the snow, you
22 know, no longer concealing those items underneath.

23 Q Thank you.

24 MR. LALLY: Ms. Gilman, could I have
25 Photograph 7666.

1 BY MR. LALLY:

2 Q And, again, sir, do you recognize what's up on
3 the screen and has now been marked as Exhibit 470?

4 A I do.

5 Q And what do you recognize that to be?

6 A That is a clear black and red piece of
7 plastic.

8 MR. LALLY: And, Ms. Gilman, if I could have
9 Photograph 7669.

10 Q And, Sergeant, do you recognize what's now up
11 on the screen as Exhibit 473?

12 A Yes. That is another piece of plastic.

13 Q And, sort of towards the top middle of the
14 screen, do you recognize what that is?

15 A Yes. That's a fire hydrant from 34 Fairview
16 Road, grass area.

17 MR. LALLY: And, Ms. Gilman, if I could have
18 the next photograph, 4670. And, for the record,
19 this is Exhibit 474.

20 Q Do you recognize that, sir?

21 A Yes, sir.

22 Q And is that a closer-up image of what was
23 depicted in the prior exhibit?

24 A Yes, it is.

25 MR. LALLY: And, Ms. Gilman, if I could have

1 Photograph 7672.

2 Q And, sir, do you recognize what's up on the
3 screen which has now been marked as Exhibit 476?

4 A I do.

5 Q And what do you recognize that to be?

6 A Another piece of red taillight plastic.

7 MR. LALLY: And, lastly, from this batch,
8 Ms. Gilman, if I could have Photograph 7673.

9 Q And, again, sir, do you recognize what's up on
10 the screen depicted in what's now marked as Exhibit
11 477?

12 A I do.

13 Q And what do recognize that to be?

14 A That is the fire hydrant and the telephone
15 switch box located on the edge of the property line at
16 34 Fairview Road.

17 Q Now, the photographs that I have just placed
18 before you, have you had a chance to review those?

19 A I have.

20 Q And do you recognize what's depicted in those
21 photographs?

22 A I do.

23 Q And what do you recognize those to be?

24 A The property at 34 Fairview Road, left corner,
25 towards the street, capturing the flagpole and

1 telephone switch box.

2 MR. LALLY: May I approach, Your Honor?

3 THE COURT: Yes.

4 MR. LALLY: The Commonwealth seeks to
5 introduce and admit as the next 10 exhibits.

6 MR. JACKSON: No objection.

7 THE COURT: Okay.

8 (Whereupon, photographs were entered and marked
9 Exhibits No. 478 through 487 in Evidence.)

10 THE COURT REPORTER: Exhibits 478 through 487.

11 THE COURT: Thank you.

12 MR. LALLY: Your Honor, with the Court's
13 permission, if I could publish some of the photos
14 for this set?

15 THE COURT: Okay.

16 MR. LALLY: Ms. Gilman, if I could have
17 Photograph 7681.

18 BY MR. LALLY:

19 Q Sergeant, do you recognize what's up on the
20 screen that has now been marked as Exhibit 481?

21 A I do.

22 Q And if you could describe to the jury what is
23 depicted in this photograph?

24 A A red piece of plastic.

25 MR. LALLY: And, Ms. Gilman, if I could have

1 the next one, 7682.

2 THE COURT: Can you use the pointer to show
3 us?

4 MR. LALLY: Yes, Your Honor.

5 THE COURT: Thank you.

6 MR. LALLY: Thank you, Your Honor.

7 Ms. Gilman, 7682.

8 BY MR. LALLY:

9 Q And, Sergeant, do you recognize what's
10 depicted on the screen that has now been marked as
11 Exhibit 482?

12 A I do.

13 THE COURT: I'm going to see counsel at
14 sidebar.

15 (Whereupon, there was a sidebar conference as
16 follows:)

17 THE COURT: So have we not seen these before?

18 MR. LALLY: You have seen them as far as the
19 lab photographs. What I'm trying to do as quickly
20 as I can is go through not every single piece but
21 some of the pieces as far as where they are
22 located, where they are found.

23 THE COURT: Okay. But I think we just saw
24 three views of one in the last one. Just put it up
25 and say, what are we looking at, instead of, can I

1 orientate you to what's been marked. Just get
2 right to it. And new, different things -- I
3 understand if you have to put pieces together to
4 justify or explain how the lab got it. But just
5 try to move it along. You are losing them, for one
6 thing. I couldn't even see where that glass was.
7 If he's going to put it up, have him show what you
8 want to show. And, again, when you look down, we
9 can't hear you.

10 MR. LALLY: I apologize.

11 THE COURT: You don't have to apologize.
12 Hold it up here and read it if you have to but just
13 keep your voice up because I am going to have to
14 turn the air-conditioning off.

15 MR. LALLY: Okay. No. I don't want that.

16 THE COURT: Okay.

17 (Whereupon, the sidebar conference concluded.)

18 MR. LALLY: Ms. Gilman, 7682.

19 BY MR. LALLY:

20 Q Sergeant, do you recognize what's up on the
21 screen as Exhibit 482?

22 A I do.

23 Q What do you recognize that to be?

24 A A red piece of plastic.

25 Q Is that the same piece of plastic but a

1 closer-up image from the prior exhibit?

2 A Yes, it is.

3 MR. LALLY: Ms. Gilman, if I could have
4 Photograph 7684.

5 Q Sergeant, do you recognize what's up on the
6 screen and has now been marked as Exhibit 484?

7 A I do.

8 Q And what do you recognize that to be?

9 A A white clear piece of plastic and a red piece
10 of plastic.

11 Q Lastly, from this, sir --

12 MR. LALLY: Ms. Gilman, if I could have 7687.

13 Q Sir, again, do you recognize what's up on the
14 screen that has now been marked as Exhibit 487?

15 A I do.

16 Q Now, Sergeant, with reference to the photos
17 before you, have you had a chance to review that set of
18 10, as well?

19 A Not this one yet. Not yet.

20 Q If you could, please.

21 A (Witness complies.)

22 Q Sergeant, do you recognize what's depicted in
23 those photographs?

24 A I do.

25 Q What do you recognize those to be?

1 A Items that were located in the street, being
2 the black cocktail drinking straw and then black pieces
3 of plastic, molding plastic, and clear pieces of
4 molding from the taillight.

5 MR. LALLY: May I approach, Your Honor?

6 THE COURT: Yes.

7 MR. LALLY: The Commonwealth would seek to
8 introduce and admit as the next 10 exhibits.

9 THE COURT: Any objection, Mr. Jackson?

10 MR. JACKSON: None, Your Honor.

11 (Whereupon, photographs were entered and marked
12 Exhibits No. 488 through 497 in Evidence.)

13 THE COURT REPORTER: Exhibits 488 through 497.

14 THE COURT: Thank you.

15 MR. LALLY: Your Honor, with the Court's
16 permission, if I could display some of these
17 photographs for the jury?

18 THE COURT: Okay.

19 MR. LALLY: Ms. Gilman, if I could have 7688.

20 BY MR. LALLY:

21 Q Sergeant, do you recognize what's up on the
22 screen?

23 A I do.

24 Q What do you recognize it to be?

25 A It's a wide shot of the drinking straw being

1 found on the edge of the roadway in front of 34
2 Fairview Road.

3 Q Sergeant, if you could, using the laser
4 pointer before you, if you could direct the jury's
5 attention to where you observed that straw?

6 A (Indicating).

7 MR. LALLY: And, Ms. Gilman, if I could have
8 7689.

9 Q Sergeant, what are we looking at in this
10 photograph?

11 A It's a closeup view of the same straw.

12 MR. LALLY: Ms. Gilman, if I could have 7692.

13 Q Sergeant, do you recognize what's up on the
14 screen that has now been marked as Exhibit 492?

15 A I do.

16 Q And what are we looking at in 492?

17 A A piece of plastic next to a measuring ruler
18 that's provided for comparison by the crime scene
19 photographer to document the item.

20 MR. LALLY: And, Ms. Gilman, if I could have
21 7695. For the record, this is now Exhibit 494.

22 Q Sergeant, what are we looking at in 494?

23 A It's the same item from just prior, just
24 zoomed in more, showing the detail of the black
25 molding, the clear, white -- clear plastic and the red

1 plastic.

2 Q Sergeant, as far as those photographs before
3 you, have you had a chance to review those?

4 A Yes, I have.

5 Q And do you recognize what those are?

6 A Yes, I do.

7 Q What do you recognize those to be?

8 A They are pieces of red plastic, pieces of
9 clear plastic and a piece of glass.

10 MR. LALLY: May I approach, Your Honor?

11 THE COURT: Yes.

12 MR. LALLY: The Commonwealth would seek to
13 introduce and admit as the next 10 exhibits.

14 MR. JACKSON: No objection.

15 (Whereupon, photographs were entered and marked as
16 Exhibits No. 498 through 508 in Evidence.)

17 THE COURT REPORTER: Exhibits 498 through 508.

18 THE COURT: Thank you.

19 MR. LALLY: Your Honor, with the Court's
20 permission, if I could publish a few of these
21 photographs for the jury, as well?

22 THE COURT: Okay.

23 MR. LALLY: And, Ms. Gilman, if I could have
24 Photograph 7700. For the record, this is now
25 Exhibit 419.

1 BY MR. LALLY:

2 Q Sergeant, if you could describe for the jury
3 what we are looking at here?

4 A We are looking at a red piece of plastic next
5 to a measuring ruler near the grass on the property at
6 34 Fairview Road, by the road.

7 Q And, if you could, sir, using that laser
8 pointer, just direct the jury's attention to where you
9 observed that item to be within this photograph?

10 A Right there (indicating).

11 MR. LALLY: Ms. Gilman, if I could have
12 Photograph 7705. And, for the record, this is
13 Exhibit 502.

14 Q And, Sergeant, if you could, again, describe
15 to the jury what, if anything, is noted there?

16 A It's a shard of red plastic next to a
17 measuring ruler.

18 MR. LALLY: Ms. Gilman, if I could have
19 Photograph 7708. For the record, this is now
20 Exhibit 504.

21 Q Again, Sergeant, if you could, using the laser
22 pointer, direct the jury's to what, if anything, of
23 significance you noted in this area.

24 A There is a black piece of plastic molding next
25 to a measuring ruler.

1 MR. LALLY: And, lastly from this set,
2 Ms. Gilman, Photo No. 7712. And, again, for the
3 record, this is Exhibit 508.

4 Q And, Sergeant, if you could, using the laser
5 pointer, direct the jury's attention to what, if
6 anything, of significance you note in this?

7 A A clear piece of plastic next to a measuring
8 ruler.

9 Q And that was found on the grass area, as well;
10 is that correct?

11 A That is correct.

12 Q Now, sergeant, with regard to that new set of
13 photos before you, have you had a chance to review
14 those?

15 A Yes, I have.

16 Q And do you recognize what's contained within
17 those photographs?

18 A Yes, I do.

19 Q And what do you recognize those photographs to
20 contain?

21 A They contain small, red pieces of plastic from
22 34 Fairview Road on the grass area where we located the
23 others. Also contained, a flimsy piece of circular,
24 like very malleable plastic, clear plastic, in addition
25 to that.

1 MR. LALLY: May I approach, Your Honor?

2 THE COURT: Yes.

3 MR. LALLY: The Commonwealth would seek to
4 introduce and admit as the next 10 exhibits.

5 MR. JACKSON: No objection.

6 (Whereupon, photographs were entered and marked
7 Exhibits No. 509 through 518 in Evidence.)

8 THE COURT REPORTER: Exhibits 509 through 518.

9 MR. LALLY: And, Your Honor, may I publish
10 some of these photographs for the jury?

11 THE COURT: Yes.

12 MR. LALLY: Ms. Gilman, if I could have
13 Photograph 7715. For the record, this is now
14 Exhibit 511.

15 BY MR. LALLY:

16 Q Sergeant, directing your attention to the
17 screen, if you could, using that laser pointer direct
18 the jury's attention to what, if anything, of
19 significance you observed in this photograph?

20 A That is the thin, malleable, circular in shape
21 piece of clear plastic that was located in the lawn
22 area of 34 Fairview Road.

23 Q Lastly, Sergeant, there is that set of photos
24 that I just placed before you. Have you had a chance
25 to review those?

1 A Yes.

2 Q And do you recognize what's depicted in those
3 photographs, sir?

4 A Yes, I do.

5 Q And what do you recognize those to be?

6 A Those are items recovered in the lawn at 34
7 Fairview Road. Those items are a shard of glass, a BPD
8 baseball hat with an American flag, and stains of
9 blood.

10 MR. LALLY: Your Honor, may I approach?

11 THE COURT: Yes.

12 MR. LALLY: The Commonwealth would seek to
13 introduce and admit as the next 16 exhibits.

14 MR. JACKSON: No objection.

15 (Whereupon, photographs were entered and marked
16 Exhibits No. 519 through 534 in Evidence.)

17 THE COURT REPORTER: Exhibits 518 through 534.

18 THE COURT: Five what?

19 THE COURT REPORTER: Thirty-four, Your Honor.
20 Exhibits 519 through 534.

21 THE COURT: Thank you very much.

22 MR. LALLY: Your Honor, with the Court's
23 permission, may I publish some of these photos for
24 the jury, as well?

25 THE COURT: Yes.

1 MR. LALLY: Ms. Gilman, if I could have
2 Photograph 7727. For the record, this is now
3 Exhibit 520.

4 Q Again, Sergeant, if you could direct the
5 jury's attention to what, if anything, of significance
6 you observed in this photograph?

7 A I observed a shard of glass next to a
8 measuring ruler.

9 MR. LALLY: And, Ms. Gilman, if I could have
10 7729? For the record, this is Exhibit 522.

11 Q Again, Sergeant, if you could describe for the
12 jury what we are looking at here?

13 A It is a larger piece of red plastic with black
14 molding around the edge, located next to the telephone
15 switch box on the grass area at 34 Fairview Road.

16 MR. LALLY: Ms. Gilman, if I could have
17 Photograph 7733. For the record, this is Exhibit
18 526.

19 Q Sergeant, from this photograph, what, if
20 anything, are we looking at here?

21 A This photograph here depicts the area which we
22 are excavating during the morning hours of February
23 3rd, 2022. As the shovel works its way towards the
24 grass, my laser pointer is directing your attention to
25 Mr. O'Keefe's hat that was compacted underneath the

1 snow on the ground.

2 Q Now, as far as this photograph is concerned,
3 does that accurately depict the depth of the snow that
4 you were digging into and sifting through on the
5 morning of February 3rd?

6 A It does.

7 Q And that, again, is several days after the
8 blizzard of January 29th, correct?

9 A That is correct.

10 MR. LALLY: And, Ms. Gilman, if I could have
11 Photograph 7740. For the record, this is Exhibit
12 530.

13 Q And, again, Sergeant, if you could describe to
14 the jury what we are looking at here?

15 A We are looking at Mr. O'Keefe's hat on the
16 grass, pressed down and compacted to a flat surface
17 underneath the snow which has been excavated around it.

18 Q Thank you very much, sir.

19 MR. LALLY: Ms. Gilman, you can take that
20 down. Thank you, Mr. Officer.

21 Q Sergeant, on February 3rd, 2022, is that the
22 first time that you had been at 34 Fairview Road?

23 A Yes, it is.

24 Q And, with respect -- if I could turn your
25 attention briefly to the following day of February 4th,

1 did you have occasion to go back to 34 Fairview Road on
2 that day?

3 A Yes, I did.

4 Q And what brought you to 34 Fairview Road on
5 February 4th?

6 A Having excavated those items on the 3rd, I
7 directed the troopers in my office, who obviously
8 reside in the communities around us, to make a point to
9 travel by that location every day on the way to work
10 and every day on the way home. The purpose of that was
11 to see if anything else was to reveal itself as the
12 snow naturally melts away and items could present
13 themselves.

14 So on February 4th, as I am traveling to work,
15 I diverted my typical route of travel to go by 34
16 Fairview Road. Just prior to my arrival, I received a
17 call stating that there was Canton Police
18 representatives at the scene and more items have been
19 revealed due to the melting snow and that I should
20 come, you know, to collect those items.

21 I was down the street. I arrived and
22 collected the items that presented itself.

23 Q And, if you recall that item that you
24 collected on February 4th, was that located on the
25 lawn, on the street or something else?

1 A It was on the lawn.

2 Q Now, with reference to your collection of
3 these items either on February 3rd, February 4th or on
4 any sort of subsequent day, how were they collected and
5 what exactly did you do with them in reference to the
6 seizing of the items and storage of the items?

7 A Each item that was collected was placed in an
8 evidence paper bag. The collection was done by
9 utilizing Latex gloves to prevent any transfer of
10 evidence from fingerprints or DNA onto those items.
11 Then those items were transported to our office, logged
12 into the system and stored in the evidence locker at
13 the office.

14 Q And each of those respective bags of items or
15 evidence, they were sealed, as well; is that correct?

16 A That's correct.

17 Q Now, turning your attention to February 10th
18 of 2022, did you have occasion to go back to 34
19 Fairview Road on that day, as well?

20 A I did.

21 Q And what, if anything, did you observe or
22 what, if anything, did you seize on that particular
23 day?

24 A We seized more shards of glass and plastic.

25 Q And, if you know or if you recall, how many

1 pieces did you seize on that particular day?

2 A My memory is exhausted to that but the exact
3 number is annotated on the bags that the items were
4 placed into.

5 MR. LALLY: Your Honor, may I approach?

6 THE COURT: Yes.

7 BY MR. LALLY:

8 Q Sir, I'm showing you a document and just ask
9 you to look at that section and look when you are
10 through.

11 A (Witness complies.)

12 MR. LALLY: Your Honor, may I approach?

13 THE COURT: Yes.

14 BY MR. LALLY:

15 Q Sergeant, is your memory refreshed as to how
16 many items and what the items were that you recovered
17 on February 10th?

18 A Yes, it is.

19 Q And what were those items and how many, sir?

20 A There were six items of clear, red and black
21 plastic and 14 items of plastic and glass.

22 Q Now, in addition to the dates that you were
23 present at 34 Fairview Road and recovered items, them
24 being February 3rd, February 4th and February 10th,
25 were there other dates that you're aware of that items

1 were recovered by troopers that you supervised?

2 A Yes.

3 Q And, if you recall, what were those dates?

4 A The dates were January 29th, February 11th and
5 February 18th.

6 Q Were there items recovered on February 8th, as
7 well?

8 A Yes.

9 Q Now, as far as your direction or having -- let
10 me first start with you. So on the dates that you were
11 there, February 3rd, 4th and 10th, were you alone on
12 those dates or were there other troopers with you when
13 you were there?

14 A On the 4th, I was alone as far as state police
15 personnel. There were other Canton law enforcement
16 representatives at the scene with me as I collected
17 that one item. On the other days, I was accompanied by
18 other troopers.

19 Q And, as far as you know, obviously not being
20 present, but from your supervision of these troopers,
21 were there other occasions where individuals were at 34
22 Fairview Road, were they alone or were they with a
23 group of troopers?

24 MR. JACKSON: Objection.

25 THE COURT: Sustained.

1 BY MR. LALLY:

2 Q Now, as far as the items that were recovered
3 when you were there on February 3rd, February 4th and
4 February 10th, did you have occasion to bring those
5 items with you to court today?

6 A Yes, I did.

7 MR. LALLY: And, Your Honor, may I approach?

8 THE COURT: Yes.

9 BY MR. LALLY:

10 Q I'm presenting you with a box. First, I'd
11 just ask if you recognize that box?

12 A I do.

13 Q And what do you recognize that to be?

14 A It's a box storing items logged into evidence
15 as they relate to this case.

16 MR. LALLY: Your Honor, with the Court's
17 permission, may the sergeant open the box?

18 THE COURT: Yes.

19 BY MR. LALLY:

20 Q Now, first, Sergeant, with regard to the items
21 as far as plastic and/or glass that you recovered from
22 34 Fairview Road on February 3rd, if you could locate
23 those items?

24 And, Sergeant, with respect to each of those
25 bags, they contain items of evidentiary value, whether

1 they be plastic or glass, that were recovered on
2 February 3rd; is that correct?

3 A That's correct.

4 Q And I'm sorry. How many bags in total do you
5 have there before you?

6 A I have three bags, two containing broken glass
7 and plastic, the stirring straw, broken red plastic and
8 clear plastic and a bag containing one black Boston
9 Police Department hat.

10 MR. LALLY: Your Honor, the Commonwealth would
11 seek to introduce and admit as the next three
12 exhibits.

13 MR. JACKSON: No objection.

14 THE COURT: No objection.

15 (Whereupon, evidence bags containing plastic, glass
16 and hat were entered and marked Exhibits No. 535,
17 536 and 537 in Evidence.)

18 MR. LALLY: Your Honor, with respect to what's
19 now been marked as Exhibit 537, with the Court's
20 permission, may the sergeant remove that item, the
21 hat, and display it for the jury?

22 THE COURT: Yes.

23 (Witness complies.)

24 BY MR. LALLY:

25 Q Thank you, sir. If you could place that back

1 in the bag.

2 And, Sergeant, from your observations of
3 Mr. O'Keefe on surveillance video from both C.F.
4 McCarthy's and the Waterfall on January 29th, what, if
5 any, similarities did you observe between the hat,
6 which you just displayed and located on the lawn of 34
7 Fairview Road, and the hat Mr. O'Keefe is wearing in
8 those videos?

9 A It appears to be the same exact hat.

10 Q Now, Sergeant, with reference to the box of
11 other items, if you could remove what, if any, items
12 you recovered and seized from 34 Fairview Road on
13 February 4th.

14 A (Witness complies.)

15 Q And, again, sir, just for the record, what's
16 contained within that bag from February 4th?

17 A Contained within the bag is a piece of red,
18 hard plastic taillight cover.

19 MR. LALLY: Your Honor, the Commonwealth would
20 introduce and seek to admit as the next exhibit.

21 MR. JACKSON: No objection.

22 (Whereupon, evidence bag containing piece of
23 plastic is entered and marked Exhibit 538 in
24 Evidence.)

25 THE COURT REPORTER: Exhibit 538.

1 BY MR. LALLY:

2 Q Lastly, Sergeant, with regard to the box, if
3 you could remove the items that you seized from
4 February 10th, 2022?

5 A (Witness complies.)

6 Q And, Sergeant, with respect to those two bags
7 of items, if you could just inform the jury what is
8 contained within those bags?

9 A The bag labeled Item No. 10 contains six
10 pieces of red, black and clear plastic. Bag labeled
11 No. 11 is containing 14 pieces of glass and plastic
12 fragments.

13 Q Thank you, Sergeant.

14 MR. LALLY: Your Honor, the Commonwealth would
15 seek to introduce and admit as the next two
16 exhibits.

17 THE COURT: Any objection, Mr. Jackson?

18 MR. JACKSON: No, Your Honor. Thank you.

19 (Whereupon, bag containing red, black and clear
20 plastic pieces was entered and marked Exhibit No.
21 539 in Evidence.)

22 (Whereupon, bag containing 14 pieces of glass and
23 plastic fragments was entered and marked Exhibit
24 No. 540 in Evidence.)

25 THE COURT REPORTER: Exhibits 539 and 540,

1 Your Honor.

2 MR. JACKSON: I'm sorry. Was that 539 and
3 540?

4 THE COURT REPORTER: Yes.

5 BY MR. LALLY:

6 Q Moving on from that, if I could bring you back
7 just one last time to the Ring videos from One Meadows
8 Ave. as far as you had testified earlier that there was
9 no video that you observed of the defendant, Ms. McCabe
10 and Ms. Roberts looking at the passenger side taillight
11 area of the vehicle, correct?

12 A That's correct.

13 Q Was there any video of the defendant,
14 Ms. McCabe and Ms. Roberts actually leaving from One
15 Meadows Ave. on that morning of January 29th?

16 A There was not.

17 Q Now, as far as the videos that were not there
18 as far as the defendant, Ms. McCabe and Ms. Roberts
19 leaving, the next video depicted Mr. Camerano arriving
20 at the residence to pick up Ms. (c) correct?

21 A Yes. That's correct.

22 Q And, with regard to the missing video of the
23 defendant arriving at One Meadows Ave. on January 29th
24 sometime after midnight, the video immediately
25 preceding that again would have been Mr. Camerano

1 arriving and picking up his daughter from One Meadows
2 Avenue sometime around 11:30 p.m., correct?

3 A Correct.

4 Q And those videos were both present, correct?

5 A That's correct.

6 Q If I could bring you back to February 3rd,
7 2022, on that date did you have occasion to meet with a
8 gentleman by the name of Brian Higgins?

9 A Yes, I did.

10 Q And, when you met with Mr. Higgins, who, if
11 anyone, from your office was with you when you met him?

12 A Trooper Mike Proctor from my office was
13 present during that interview.

14 Q And, during the course of that interview,
15 what, if any documentation, did Mr. Higgins provide you
16 with?

17 A Mr. Higgins provided me with a printout of a
18 Cellebrite extraction containing conversations via text
19 message between him and Mr. John O'Keefe and between
20 him and the defendant. He also provided a digital copy
21 of the same extraction on a CD.

22 Q Now, what, if anything, did you advise
23 Mr. Higgins of at that time as far as Mr. O'Keefe's
24 phone and the defendant's phone?

25 A I advised Mr. Higgins that we were in

1 possession of both of those devices and would have the
2 extraction and accurate documentation of those
3 conversations.

4 Q And did he seem to understand that when you
5 told him that?

6 A Yes. He understood it.

7 MR. JACKSON: Objection.

8 THE COURT: Sustained.

9 MR. JACKSON: Move to strike.

10 THE COURT: I'll strike that.

11 BY MR. LALLY:

12 Q Now, also on February 3rd, at some point did
13 you have occasion to go inside of 34 Fairview Road?

14 A Yes, I did.

15 Q And who, if anyone, did you interview inside
16 of 34 Fairview Road on that date?

17 A I interviewed Ms. Albert.

18 Q And that would be, just for the record,
19 Nicole Albert; is that correct?

20 A That's correct.

21 Q And who, if anyone, was present with you
22 during that interview of Nicole Albert?

23 A Trooper Michael Proctor was present.

24 Q Anybody else from the Albert family present in
25 the home or present during the course of that

1 interview?

2 A Mr. Brian Albert was also present. I don't
3 know who else exactly was present in the home. I just
4 know that those two residents were in the room with us.

5 Q And where was Brian Albert at the time that
6 you conducted the interview of Nicole Albert?

7 A In the room with us, seated next to her.

8 Q Now, with reference to -- I'm going to ask you
9 just a little bit about sort of the interview process
10 as far as the interviews that you conducted in this
11 case.

12 A Yes, sir.

13 Q If you could, describe for the jury starting
14 with sort of how many people from your unit are present
15 for a given interview and how those interviews are
16 conducted.

17 A We conduct interviews always in pairs. I
18 think I mentioned it yesterday. Typically, during a
19 regular investigation into a homicide or any death
20 investigation, we pair up our troopers with a local
21 detective. In this instance, since Canton had recused
22 themselves from the interview portion of the
23 investigation, they were not going to provide manpower
24 for those interviews to be conducted. Thus we had to
25 utilize only troopers from our office in order to

1 conduct those interviews.

2 Q Typically, obviously not perfect, but as far
3 as the interviews that you were present for, about how
4 long a period of time, generally speaking, were the
5 interviews that you conducted in this case?

6 A From my experience, I have learned that to
7 fully communicate a course of recollection of events
8 that an individuals observes, experiences or is aware
9 of and understand every detail of that experience, it
10 would take approximately 45 minutes at a minimum to
11 conduct a full interview with a witness in detail.

12 Q Now, sir, if I could turn your attention to
13 June 9th of 2022. On that date at some point did you
14 have occasion to meet with the defendant?

15 A Yes, I did.

16 Q At some point during that meeting, did you
17 have conversation with the defendant?

18 A Yes, I did.

19 Q And was that conversation or at least portions
20 of it memorialized in any way?

21 A Yes, it was.

22 MR. LALLY: Your Honor, may I approach?

23 THE COURT: Yes.

24 BY MR. LALLY:

25 Q Sir, I'm showing you a disk. Does that

1 contain an audio recording -- to the best of your
2 knowledge, does that contain a audio recording of a
3 portion of your conversation with Ms. Read on June 9th,
4 2022?

5 A Yes, it does.

6 MR. LALLY: Your Honor, may I approach?

7 THE COURT: Yes.

8 MR. LALLY: The Commonwealth would seek to
9 introduce and admit as the next exhibit.

10 THE COURT: Yes. No objection, Mr. Jackson?

11 MR. JACKSON: No objection.

12 (Whereupon, CD with interview Re: Karen Read
13 excerpt was entered and marked Exhibit No. 541 in
14 Evidence.)

15 THE COURT: Folks, before we play this, please
16 be mindful of the instruction from yesterday. You
17 are allowed to hear statements allegedly made by
18 the defendant allegedly concerning the crimes with
19 which he's charged in this case. Before you can
20 consider any such statement as evidence, the
21 Commonwealth must prove to you beyond a reasonable
22 doubt that the defendant made the statement she's
23 alleged to have made and that she made it
24 voluntarily, freely and rationally.

25 In determining whether the statement made by

1 the defendant was voluntary or not, you may
2 consider all the surrounding circumstances. These
3 include when and where the statement was made, the
4 nature of any conversations with the police or any
5 questioning by the police, the defendant's physical
6 and mental condition, including her intelligence,
7 age, education, experience and personality. Your
8 decision does not turn upon any one factor, and you
9 must consider the totality of the surrounding
10 circumstances.

11 MR. LALLY: Your Honor, with the Court's
12 permission, may we publish that for the jury at
13 this time?

14 THE COURT: Yes. Do you want to turn off the
15 air-conditioning? This is very short, right?

16 MR. LALLY: It is very short and if we could,
17 please, yes.

18 THE COURT: And this is just audio?

19 MR. LALLY: Yes, Your Honor.

20 (Whereupon, the CD is played.)

21 MR. LALLY: Thank you.

22 BY MR. LALLY:

23 Q Now, Sergeant, upon hearing that statement
24 from the defendant, what was your reaction?

25 MR. JACKSON: Objection.

1 THE COURT: Sustained.

2 BY MR. LALLY:

3 Q Upon hearing that statement, what, if
4 anything, did you do?

5 A I advised the defendant not to further speak.

6 MR. JACKSON: Objection.

7 THE COURT: I'll allow that.

8 BY MR. LALLY:

9 Q Now, at some point over the course of your
10 investigation, were you made aware of forensic findings
11 relating to the defendant's taillight?

12 A Yes, I was.

13 Q And specifically DNA findings?

14 A Yes.

15 Q And specifically that there were --

16 MR. JACKSON: Objection.

17 THE COURT: Sustained.

18 MR. LALLY: Your Honor, may we approach?

19 THE COURT: Yes.

20 (Whereupon, there was a sidebar conference as
21 follows:)

22 MR. LALLY: So, Your Honor, what I intend to
23 ask him and what I expect his response to be --
24 what I'm trying to get into is the fact that a
25 buccal swab was taken of him and Trooper Proctor

1 and then sent off to the lab, not anything about
2 the results. And I'm not going to be asking him
3 about any positive results as it relates to
4 Mr. O'Keefe but just simply that he's aware that
5 there were multiple contributors listed in the
6 results. Therefore, he voluntarily provided his
7 buccal swab to be submitted to the lab for testing.

8 MR. JACKSON: All of that is predicated on
9 hearsay. He can certainly testify. I don't think
10 there's any issue of him testifying did you submit
11 yourself to a buccal swab and give one. Everything
12 else --

13 THE COURT: That's it. You can't say why he
14 did it based on results. You can just say that he
15 voluntarily did it and if he saw anybody else do
16 it, if you want to --

17 MR. LALLY: Okay. Understood.

18 THE COURT: Thank you.

19 (Whereupon, the sidebar conference concluded.)

20 MR. LALLY: Your Honor, may I have one more
21 moment?

22 THE COURT: Yes.

23 BY MR. LALLY:

24 Q So, Sergeant Bukhenik, on January 16th, 2024,
25 at some point in that day did you meet with a

1 Sergeant Gallerani of the Needham Police Department?

2 A I did.

3 Q And who, if anyone else -- well, let me ask
4 you this: As far as any other troopers from your
5 office, who, if anyone else, was there with yourself
6 and Sergeant Gallerani?

7 A Trooper Mike Proctor.

8 Q And what was the purpose of your meeting with
9 Sergeant Gallerani and Trooper Proctor on that morning?

10 A Collection of our DNA.

11 Q And was that something that you did voluntary?

12 A Yes.

13 Q And how was it that the sergeant collected
14 your DNA?

15 A Through a buccal swab.

16 Q And were you present when Trooper Proctor
17 submitted to a buccal swab, as well?

18 A Yes, I was.

19 Q And, as far as the swabbings that were taken
20 from both yourself and Trooper Proctor, were those
21 logged into evidence by you or did Sergeant Gallerani
22 take them with him when he left?

23 A Sergeant Gallerani took them with him when he
24 left.

25 MR. LALLY: Your Honor, may I approach?

1 THE COURT: Yes.

2 MR. LALLY: My apologies, Your Honor.

3 Thank you very much, Sergeant. Your Honor, I
4 have no further questions.

5 THE COURT: Mr. Jackson, cross-examination?

6 MR. JACKSON: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. LALLY:

9 Q Sergeant Bukhenik, I want to start with one of
10 the latter things that you discussed with Mr. Lally and
11 that's specific to the Ring video that y'all talked
12 about this morning. Do you have that in mind?

13 A I do.

14 Q The search warrant that produced -- and, just
15 so we're clear, I'm talking about the specific Ring
16 video or series of videos that were associated with One
17 Meadows, John O'Keefe's house.

18 A Okay.

19 Q You didn't write the search warrant for those
20 Ring videos; did you?

21 A I did not.

22 Q You were not the affiant for those search
23 warrants?

24 A I was not.

25 Q Who was the author of the search warrant and

1 the affiant?

2 A It was Trooper Mike Proctor.

3 Q Who received the actual Ring video or videos
4 from the Ring corporation?

5 A It was Trooper Mike Proctor.

6 Q And who ultimately either logged those into
7 evidence or controlled those once they were received
8 from the Ring corporation?

9 A I believe it was Trooper Mike Proctor.

10 Q And, ultimately, Sergeant Bukhenik, you did
11 note that in addition to just the physical videos
12 themselves that log-in info and log-in keystrokes, et
13 cetera, were requested from the Ring corporation, as
14 well, correct?

15 A There was discussion with Ring, asking for
16 those logs.

17 Q Is it correct to say an activity log?

18 A That's what was requested, yes, activity log.

19 Q So ultimately the activity log would show who
20 logs in, who accesses the data, things of that nature,
21 or at least that was the hope?

22 A That is what was requested.

23 Q It would also show logging in and executing
24 deletions, manipulating the log files and things of
25 that nature, correct?

1 A That is what was requested, yes.

2 Q When you reviewed those activity logs, there
3 was no evidence revealed that my client ever logged
4 into that account, correct?

5 A There was no activity logs provided by Ring.

6 Q So you have zero -- hang on. Isn't it true
7 that Ring contacted Trooper Proctor and indicated that
8 they had created a DropBox folder that contained the
9 evidence that had been sought in the search warrant?

10 MR. LALLY: Objection.

11 THE COURT: Sustained.

12 BY MR. JACKSON:

13 Q Isn't it true that the search warrant return
14 specified account investigation, video recordings and,
15 number three, activity logs associated with the video
16 recordings for all times displayed in UTC?

17 A I am not aware of that, no.

18 Q Do you recall that activity logs were, in
19 fact, provided from the Ring corporation?

20 A I do not recall that, no.

21 MR. JACKSON: May I approach briefly?

22 THE COURT: Yes.

23 BY MR. JACKSON:

24 Q Take a look, Sergeant, at that paragraph which
25 my finger's on. It's about the third paragraph down in

1 the middle of the page. Review that to yourself and
2 let me know when you're finished.

3 A (Witness complies.)

4 Q Have you had an opportunity to review that?

5 A Yes.

6 MR. JACKSON: May I approach, Your Honor?

7 THE COURT: Yes.

8 BY MR. JACKSON:

9 Q Does this refresh your recollection as to the
10 items received from the Ring corporation?

11 A That is the first time I saw that document.
12 So it does not refresh my recollection. I simply read
13 it.

14 Q So do you have a recollection as you sit here
15 that, in fact, during the course of your investigation,
16 the three items that you received from the Ring
17 corporation were the account information, the video
18 recordings and, quote, "activity logs associated with
19 the video recordings at all times displayed in UTC"?

20 A To the extent of its availability, as it says
21 in that document.

22 Q Okay. The long and short of it is, during the
23 entire course of your investigation, you never revealed
24 any -- that investigation never revealed any evidence
25 whatsoever that my client ever even accessed the

1 account information for the Ring account associated
2 with this search warrant, correct?

3 A Nothing provided by Ring proved or suggested
4 or proved any evidence of that type of activity, no.

5 Q Thank you. Trooper Proctor, you were notified
6 --

7 A I'm not Trooper Proctor.

8 Q I'm sorry. No, you're not. Sergeant Bukhenik
9 --

10 A Sergeant Bukhenik.

11 Q How do I say it?

12 A Bukhenik.

13 Q I'll give that a shot. Bukhenik? Is that
14 better?

15 A Yes. That's better. Thank you.

16 Q If I screw it up again, please.

17 On January 29th, you were notified about a
18 Boston police officer found gravely injured outside the
19 home of 34 Fairview at about 6:40 in the morning. Was
20 that your testimony?

21 A That is not.

22 Q What time were you notified?

23 A I was not notified it was a Boston police
24 officer.

25 Q So you didn't have that information upon the

1 first notification?

2 A I did not.

3 Q Okay. What information did you have?

4 A It was a male party in the snowbank possibly
5 of a heart attack.

6 Q At what point did you learn that the
7 individual was, in fact, a sworn Boston police officer?

8 A I do not know exactly when I learned that he
9 was a Boston police officer.

10 Q Do you think it was during that day or the
11 following day?

12 A It was most likely that day.

13 Q Fair enough. Trooper Proctor was ultimately
14 assigned as the -- what did you call him? Not lead
15 investigator but case officer?

16 A That's correct.

17 Q He was assigned on the 29th, correct?

18 A He was on call from 7:00 a.m. on January 28th
19 until 7:00 a.m. on January 29th.

20 Q So his assignment was -- he was assigned on
21 the 29th because he was on call?

22 A He was on call. His assignment took effect
23 when the schedule came out back in mid-December.

24 Q Okay. Well, he wouldn't be assigned to this
25 investigation until there was a need for the

1 investigation, right? That's all I'm getting to. And,
2 once the call came in, he was the assigned case agent?

3 A Once the calls come in, the person that's on
4 call is automatically assigned that case.

5 Q All right. Did you personally -- as his
6 supervisor, did you personally respond to 34 Fairview
7 at any point on January 29th?

8 A No, I did not.

9 Q Did Trooper Proctor at your direction or on
10 his own ever respond to 34 Fairview Road at any time on
11 January 29th?

12 A No, he did not.

13 Q Based on your initial investigation, and I'm
14 talking about going way back, Sergeant, on your initial
15 investigation, by 10:00 or 10:30 in the morning, 10:40
16 in the morning, it was your belief that Mr. O'Keefe had
17 been struck in the face by a person. That was your
18 initial understanding of the circumstances surrounding
19 the investigation, correct?

20 A My initial understanding was that the
21 defendant stated that she hit him. We did not know
22 the --

23 Q Sergeant, you hadn't even met my client at
24 that point. You hadn't interviewed a single witness by
25 10:41 in the morning, correct, not one witness?

1 A That's not correct. We had already
2 interviewed the first respondents.

3 Q When I say "witness," I'm talking about
4 civilian witnesses. So at 10:41, you hadn't
5 interviewed a person at 34 Fairview or civilians
6 associated with this incident, correct?

7 A At that point, no civilians had been
8 interviewed, no.

9 Q But, at 10:41, Sergeant, you contacted Good
10 Samaritan Hospital to inform them that, quote,
11 "Mr. O'Keefe was struck in the face with a cocktail
12 glass," end quote, correct?

13 A I do not recall contacting Good Samaritan
14 Hospital.

15 MR. JACKSON: May I approach?

16 THE COURT: Yes.

17 BY MR. JACKSON:

18 Q I'd like you to take a look at this document
19 and, if you wouldn't mind, pay special attention to the
20 second page, the bottom paragraph, where it's tabbed in
21 pink.

22 A (Witness complies.)

23 MR. JACKSON: Your Honor, may I approach?

24 THE COURT: Yes.

25 BY MR. JACKSON:

1 Q Thank you, sir. Having reviewed this, does
2 this refresh your recollection that you contacted Good
3 Samaritan Hospital and gave them an assessment, at
4 least based on your investigation, at that time?

5 A That is not true.

6 Q Okay. What did you say to Good Samaritan
7 Hospital?

8 A I never spoke to Good Samaritan Hospital.
9 That document is for the medical examiner's office.

10 Q I am not asking you where the document is
11 from. I'm asking you if the document says Trooper
12 Yuriy Bukhenik called back at 10:41, stating the case
13 is now being treated as a suspicious --

14 MR. LALLY: Objection.

15 THE COURT: The objection is sustained.

16 BY MR. JACKSON:

17 Q Did you say, did you call back to Good
18 Samaritan Hospital and say that the investigation was
19 being treated as a suspicious due to domestic -- sorry
20 -- due to a domestic situation? Did you say that?

21 A I never spoke to Good Samaritan Hospital.

22 Q Did you say that there's a possibility that V
23 was struck in the face with a cocktail glass?

24 MR. LALLY: Objection.

25 THE COURT: Sustained.

1 BY MR. JACKSON:

2 Q Did you ever contact anybody at any medical
3 facility and indicate that the investigation was being
4 treated as a "suspicious," in quotation marks because
5 the victim appeared to have been struck in the face by
6 a cocktail glass?

7 A Yes.

8 MR. LALLY: Objection.

9 THE COURT: I'll allow that. Did you ever say
10 that?

11 THE WITNESS: Yes, Your Honor. Yes. I did
12 say that to the --

13 BY MR. JACKSON:

14 Q To whom?

15 A To the medical examiners operations desk.

16 Q Okay. So when I was asking you for your --
17 you said, no, that's not true, that's never happened at
18 Good Sam, you were correcting me on the fact that it
19 happened at the medical examiner's office, not at Good
20 Sam?

21 A I responded and answered your question
22 honestly, yes.

23 Q Okay. So honestly, you did, in fact, at
24 10:41 a.m. indicate to another professional involved in
25 the investigation that the circumstance was being

1 treated as a physical assault at that point, correct?

2 A I communicated our suspicions to the medical
3 examiner's office.

4 Q And that was at 10:41 or thereabouts in the
5 morning, correct?

6 A That's correct.

7 Q Your initial investigation during those
8 obviously critical hours, the beginning hours, led you
9 to believe that there was at least a good possibility
10 -- you indicated that you made a phone call -- that it
11 was a physical altercation that led to John O'Keefe's
12 death, correct?

13 A That's correct, yes.

14 Q What steps did you take, sir, to, in those
15 moments, to determine whether someone in the house at
16 34 Fairview may have been involved in that physical
17 altercation that you suspected at the time?

18 A As investigations develop, we followed the
19 evidence and statements made. The steps I took was
20 Trooper Proctor and I proceeded to an eyewitness who
21 was also present at the scene when the victim was
22 discovered and interviewed Ms. McCabe.

23 Q And, prior to that, prior to interviewing
24 Ms. McCabe -- by the way, that was at Ms. McCabe's
25 home, correct?

1 A That's correct.

2 Q Even though you believed that there may have
3 been a physical altercation, you didn't ask anybody to
4 come down to the station, is that right, any of the
5 witnesses?

6 A That's correct.

7 Q And you did not seek to actually go to the
8 physical location of 34 Fairview in those next few
9 hours?

10 A That's correct.

11 Q Or the next few days, correct?

12 A Not myself, no.

13 Q Okay. As a matter of fact, Trooper Proctor
14 did not either, did he?

15 A No, he did not.

16 Q You didn't secure the interior of the house as
17 a potential crime scene? You certainly know how to do
18 that, right?

19 A That is a compound question. Do you want me
20 to answer whether I did it or whether I know how to do
21 it?

22 Q Well, I'll ask the question. If you can
23 answer it, please answer it.

24 A Okay.

25 Q Can you answer that question?

1 A I can answer that question.

2 Q Why don't you answer both of them, then.

3 A The first portion is we did not secure the
4 home as a crime scene. And the second portion, yes, I
5 do know how to do that.

6 Q And you didn't, as a Massachusetts State
7 Police official, you didn't secure the outside as a
8 crime scene, either, did you?

9 A I did not, no.

10 Q To your knowledge, nobody else from
11 Massachusetts State Police ever did, either, did they?

12 A Yes, they did.

13 Q How was that done and when?

14 A When members of our office and the SERT team
15 responded to that location and secured the front yard
16 grass area and processed them.

17 Q That was at 5:45, 6:00 o'clock that night on
18 the 29th?

19 A I believe it was earlier, but I was not
20 present. So I can't testify to the time.

21 Q So you don't know personally what they did to,
22 quote, unquote, "secure" or not secure the crime scene?
23 You know they searched it. But, in terms of securing
24 it as a crime scene, you don't have personal knowledge
25 to that?

1 A I was not present.

2 Q You never took any photos of the interior of
3 the house, correct?

4 A I did not, no.

5 Q You never caused CSSS to go inside the house
6 and process that house as a potential crime scene,
7 correct?

8 A I did not, no.

9 Q No forensic criminalist at your direction ever
10 went into 34 Fairview?

11 A No, they did not.

12 Q And the people that you interviewed on January
13 29th, you already mentioned Ms. McCabe, the other
14 people were her husband, Matt McCabe, correct?

15 A That's correct.

16 Q And her brother-in-law, Brian Albert; is that
17 right?

18 A That is correct.

19 Q And all three of them were interviewed where?

20 A They were interviewed at the McCabe residence.

21 Q Now, yesterday when you testified, did you
22 indicate that Brian Albert was not present in the home
23 when you interviewed Matt McCabe and Jennifer McCabe?

24 A He was not present in the dining room when we
25 were interviewing each individual separately.

1 Q So if all three of them testified that he
2 arrived before you arrived, they would all be wrong?

3 A I did not see him in the home when we arrived,
4 no.

5 Q I want to switch gears real quick to a couple
6 of the physical items that you testified about
7 yesterday, specifically, the gray shirt or the gray
8 hoodie and the orange shirt.

9 You and Trooper Proctor collected both of
10 those items, you indicated, from the floor of the
11 hospital at Good Samaritan, correct?

12 A That's correct.

13 Q You testified that you and Trooper Proctor
14 immediately bagged both of those items. They were sort
15 of sopping wet, I think you said?

16 A That's correct.

17 Q You indicated that the bags were so wet that
18 you had to take the items back out of the bags and then
19 lay them out on, I think you said, butcher paper; is
20 that right?

21 A The items were soaked and wet. They were
22 bagged, double bagged, to prevent leakage of
23 physiological fluids and the moisture coming off of it.
24 And then once they were transported to the office, they
25 were laid out on butcher paper in order to dry

1 naturally.

2 Q So you went from Good Samaritan directly to
3 Dighton, correct?

4 A That is correct.

5 Q And then you went from Dighton directly to the
6 Canton Police Department after which you had seized the
7 vehicle, correct, and the phone?

8 A We seized the phone and the vehicle in Dighton
9 and followed the tow truck straight to the Canton
10 Police Department.

11 Q So at some point, if you had received or
12 gathered the wet clothing at Good Sam, went from Good
13 Sam to Dighton and from Dighton to Canton P.D., at what
14 point that evening did you finally get those items of
15 clothing out and laid out to dry?

16 A It was late that night around 10:00 or so.

17 Q So where were the items in the meantime?

18 A They were stored in the back passenger
19 compartment of my pickup truck.

20 Q In those double bags?

21 A Correct.

22 Q Who took control of the items to then lay them
23 out like that night at the office?

24 A I do not recall.

25 Q Was that you or Trooper Proctor?

1 A I don't recall. I don't remember.

2 Q At some point, obviously, it was getting late.
3 You'd been on duty for a long time that day. You went
4 home at some point; is that correct?

5 A At some point, yes.

6 Q Did you wait for those clothes to dry before
7 you went home or did you leave that in Trooper
8 Proctor's hands?

9 A No. Once they were laid out in the processing
10 area in the office, we went home.

11 Q Okay. Who would have controlled those items
12 of evidence when you left?

13 A They are under lock and key within the secure
14 area of the district attorney's office. So they are
15 secured. Nobody is in physical control, watching guard
16 over it.

17 Q Who had access to that area?

18 A Troopers in our office.

19 Q Meaning you, obviously?

20 A Yes.

21 Q As supervisor. Trooper Proctor, as well,
22 correct?

23 A Yes.

24 Q Ultimately, given the fact that he was the
25 case officer sort of in charge, the lead, he would have

1 bagged those items up and been responsible for taking
2 those items, tagging them, getting them stored wherever
3 they needed to be stored and processed, correct?

4 A As a case officer, he could direct other
5 people to perform those tasks for him. But the
6 evidence officers in the office logged in the evidence.
7 And, once it was dry, it was sealed up, bagged and put
8 into storage. As far as who actually performed those
9 tasks, I do not know.

10 Q Well, yesterday --

11 MR. JACKSON: Your Honor, may I approach?

12 THE COURT: Yes.

13 BY MR. JACKSON:

14 Q It's not a vision contest. I'll bring these
15 up to you in just a second. But just for familiarity's
16 sake, do you recognize these two bags as bags that you
17 brought to court with you yesterday?

18 A They look familiar, yes.

19 Q Okay. This one has a "437" on it. The one on
20 my left has a "438" on it.

21 MR. JACKSON: May I approach?

22 THE COURT: Yes.

23 BY MR. JACKSON:

24 Q I'm not going to ask you to look at those.
25 Don't worry about gloving-up at this point. The bag on

1 your left, which one is that, 437 or 438?

2 A The bag on my left is 437.

3 Q Four thirty-seven. Okay. And you indicated
4 that those items were bagged after the clothing was
5 dried and then ultimately processed in, logged in,
6 correct?

7 A Once the item's dried, they were bagged and
8 logged in, waiting for processing. Yes.

9 Q But you didn't personally do that?

10 A No, I did not.

11 Q As a matter of fact, looking at the bag on
12 your right, what's been marked as Exhibit 43 -- help
13 me.

14 A Eight.

15 Q Four thirty-eight. Thank you. That one has
16 some writing on it, correct?

17 A Yes. It has a lot of handwriting on it. Yes.

18 Q And that -- whose handwriting is that?

19 A I don't know.

20 Q You've seen Trooper Proctor's handwriting a
21 thousand times, I guess, correct?

22 A Not a thousand times but --

23 Q Does it look like his writing?

24 A It says "Trooper Proctor" on it. But, other
25 than that, I do not know what Trooper Proctor's

1 handwriting looks like.

2 Q All right. It indicates that Trooper Proctor
3 is the one that bagged that up, that item or those
4 items, up, correct?

5 A Yes. This bag indicates the item was
6 collected by Trooper Proctor on 1/29.

7 Q Right. And it says "Brockton," correct?

8 A Good Samaritan Hospital in Brockton, yes.

9 Q You just took the question out of my mouth.
10 That's where Good Samaritan Hospital is, correct?

11 A That's correct.

12 Q And there is a tag or a printed label, it
13 looks like a label maker of some sort, that is on that
14 physical bag, correct?

15 A Yes.

16 Q Before we get to that, what is the description
17 of that bag in handwriting?

18 A I'm sorry. Can you be specific as to
19 description of what or --

20 Q Where it says, description of items.

21 A Description of the clothes evidence?

22 Q Correct.

23 A It says, one orange tee shirt, one gray long-
24 sleeve shirt.

25 Q Okay.

1 MR. JACKSON: May I approach, Your Honor?

2 THE COURT: Yes.

3 BY MR. JACKSON:

4 Q Before I do that just so I close this loop,
5 what's the description on the bag to your left, the one
6 that looks like it's less wrinkled?

7 A No. 437?

8 Q Yes. If you could read the same clothing
9 description?

10 A The description of the clothes evidence
11 states, sweatshirt with recovered inside contained.

12 Q Thank you.

13 MR. JACKSON: May I approach now?

14 THE COURT: Yes.

15 MR. JACKSON: Thank you.

16 BY MR. JACKSON:

17 Q Yesterday when you opened -- I'll keep my
18 voice up.

19 Yesterday when you opened these two bags, this
20 one, 437, has the gray sweatshirt in it. Four thirty-
21 eight has the orange tee shirt in it now, correct?

22 A That's where it was in the bag. Yes.

23 Q All right. However, the bag indicates at one
24 point this bag, 438, the physical bag I'm holding in my
25 left hand, had both the sweatshirt and the tee shirt

1 together, correct?

2 A That's what the description is. I do not know
3 if that was the case or, in fact, the case.

4 Q The reason you don't know is because you're
5 not the one who bagged them. Trooper Proctor did,
6 correct?

7 A The reason I don't know is I wasn't present
8 during the separation of those items, and I did not
9 observe it taking place, nor was I made aware of how
10 the items were separated or when.

11 Q You are aware, however, that that tag, the
12 label-maker looking tag, the white tag that's on that
13 bag, indicates that it was -- indicates a date of
14 February 4th, correct?

15 A You have to bring that back up. I didn't --

16 Q I'm sorry.

17 A -- take note of that.

18 Q My fault.

19 MR. JACKSON: May I, Your Honor?

20 THE COURT: Yes.

21 BY MR. JACKSON:

22 Q I direct your attention to the tag and the
23 date associated with that tag.

24 A The label maker tag does have the date
25 February 4th, 2022 on bag number Exhibit 438.

1 MR. JACKSON: May I approach?

2 THE COURT: Yes.

3 BY MR. JACKSON:

4 Q Thank you, sir.

5 That's obviously six days after the item was
6 actually recovered on the 29th, correct?

7 A Yes, it is.

8 Q So that indicates, at least based on that tag,
9 that that item was not booked into evidence and
10 processed until six days after it was actually
11 recovered on the floor at Good Samaritan Hospital; is
12 that right?

13 A The date indicates February 4th, 2022.

14 Q Right. And that date would be indicative in
15 your experience of the date that it's moved into
16 processing by some other folks, the evidence sergeants
17 or whomever or the evidence officers, rather, or
18 whomever, correct?

19 A I can't speak to their procedure as far as
20 when they print that date. That date could be when
21 they printed the label, but the bag might have been
22 tagged otherwise. I do not know that.

23 Q But there is no other tag on that bag that
24 suggests an earlier date, correct?

25 A There is just that one tag from the label

1 maker.

2 Q My question to you, if you know, sir, and you
3 may not know, is what was happening to these items
4 between January 29th after you lost sight of them that
5 night on the butcher paper and February 4th, when that
6 tag indicates that they were first processed?

7 A To the best of my knowledge, those items were
8 drying on the butcher paper.

9 Q For six days?

10 A If that's what the label maker says, yes, six
11 days. They were soaking wet.

12 Q And those would have been certainly accessible
13 to and in the possession of the lead case officer in
14 the case, Trooper Proctor, right?

15 A Yes. If Trooper Proctor needed to review
16 those items, he would have access to those items.
17 Absolutely.

18 Q And you're also aware that the first actual
19 log of any chain of custody for those items is March
20 14th when they were finally submitted six weeks later
21 to the crime lab?

22 A That is not true. The first actual log of
23 those items is when we collected them from the
24 hospital.

25 Q Where is the log? I'm talking about the

1 physical log, like a sign-in/sign-out log. Where is
2 the log?

3 A It's documented in the reports, saying that we
4 collected it.

5 Q I know that there is a report. Anybody can
6 write a report, right? I can write a report. It
7 doesn't mean anything. I'm asking for a log.

8 MR. LALLY: Objection.

9 THE COURT: So the objection is sustained.

10 BY MR. JACKSON:

11 Q Obviously, when items move in and out of
12 people's custody in an official capacity for the
13 Massachusetts State Police, there is a log of that,
14 correct?

15 A It's documented, yes.

16 Q Or at least it should be, correct?

17 A It's documented.

18 Q Where is the log of these items before March
19 14th?

20 A It's documented in the report.

21 Q There is no log, is there, Sergeant?

22 A I do not know.

23 Q Okay. I want to talk a little bit about some
24 searches that Mr. Lally asked you about, February 4th
25 and February 10th, very specifically. Both of those

1 searches you were involved with out at 34 Fairview,
2 correct?

3 A Correct.

4 Q But, Sergeant, you didn't personally write a
5 report about your conduct at 34 Fairview on either of
6 those two dates? In other words, you didn't go back to
7 the station and generate a report, yourself?

8 A I don't recall doing that, no.

9 Q There were no photos that you took of the
10 items at the location? Somebody else took photos,
11 correct?

12 A I did not take photos.

13 Q Okay. And the first report that indicates
14 anything that happened or was recovered at the location
15 on either February 4th or February 10th, that was first
16 notated in a report dated November 4th, 2023, a year
17 and a half, a year and several months, later, correct?

18 A If you say so. I do not know the exact date.
19 That report would have to be presented to me.

20 MR. JACKSON: May I approach?

21 THE COURT: Yes.

22 BY MR. JACKSON:

23 Q You don't have to read the whole thing but if
24 you can skip to the part that talks about the February
25 4th and February 10th searches.

1 I'm sorry. I didn't realize you were finished
2 already. What's the date of that -- well, let me ask a
3 foundational question.

4 Does that refresh your recollection as to the
5 date of the report that actually talks about the
6 February 4th and February 10th searches?

7 A It does.

8 Q And what is the date of that report, sir?

9 A This report is dated November 4th, 2023.

10 Q Thank you.

11 MR. JACKSON: May I approach?

12 THE COURT: Yes.

13 MR. JACKSON: Thank you.

14 BY MR. JACKSON:

15 Q Now, as it relates to those two searches, I'd
16 like to ask you a little bit about the February 4th
17 search first.

18 You indicated that you actually responded to
19 34 Fairview personally, correct?

20 A I was responding to that location on my own.
21 I personally responded. Yes.

22 Q Okay. That was because you had received
23 information that Chief Berkowitz had seen something or
24 found something; is that right? Chief Berkowitz from
25 Canton P.D.?

1 A That is not correct. No.

2 Q Okay. So when you got there, was Chief
3 Berkowitz there?

4 A Yes, he was.

5 Q You just happened to go by 34 Fairview at
6 the exact same time on the exact same date as
7 Chief Berkowitz, or was that coordinated in some way?

8 A There was no coordination between me and
9 Chief Berkowitz. As I testified, I had directed the
10 troopers to go by the location. I planned to go by the
11 location in the morning on the way to the office and in
12 the afternoon on the way home just to see if any more
13 items would reveal themselves.

14 So that morning I was actually traveling to
15 that location in order to conduct a view of the area to
16 see if any more evidence had been revealed. Prior to
17 my arrival, approximately while I was on Chapman
18 Street, I received a call indicating that Chief
19 Berkowitz was at that location.

20 Q Okay. And was there also an Officer Lank,
21 Sergeant Lank?

22 A I do not know if Sergeant Lank was there, no.

23 Q Okay. Chief Berkowitz certainly was there?

24 A Yes.

25 Q And Chief Berkowitz indicated that as he was

1 driving by, he saw a piece of plastic?

2 A Yes.

3 Q And stopped his car and then started making
4 phone calls?

5 A I believe that's what he indicated for the
6 call, yes.

7 Q Did you question Chief Berkowitz about why he
8 was driving by the location in the first place?

9 A Absolutely not.

10 Q You knew at that point that the Canton Police
11 Department had been recused because of at least an
12 appearance or a potential for a conflict of interest,
13 correct?

14 A I knew they recused themselves due to -- only
15 in respect to interviews. They didn't want to perform
16 or conduct interviews with us.

17 Q Well, if there is a conflict of interest,
18 Sergeant, for a department, conducting the interviews
19 is just one aspect of an investigation, correct?

20 A I'm not going to speak of conflict of
21 interest. But, yes, conducting an interview is just
22 one aspect of an investigation.

23 Q So is it your testimony that your
24 understanding was they couldn't conduct interviews but
25 they could collect evidence, store evidence, write

1 search warrants, get returns on search warrants,
2 execute search warrants, conduct searches? They could
3 do all that but not conduct interviews?

4 A My understanding was they were recusing
5 themselves from conducting interviews. They still
6 allowed us to use their facilities. We utilized their
7 conference room to conduct interviews. There was
8 evidence being stored at their sally port, being the
9 vehicle. So that was my understanding.

10 Q Isn't it true that you knew that the entirety
11 of the Canton Police Department had recused itself
12 because of a familiarity between one of their members,
13 Kevin Albert, and the Albert family on whose lawn
14 John O'Keefe was found? That was the conflict,
15 correct?

16 A I knew that that was the connection between
17 them, yes.

18 Q And you understood, sir, that that agency was
19 to have nothing from an investigative standpoint,
20 nothing to do with this investigation, correct?

21 A They were not conducting the investigation,
22 no.

23 Q As a matter of fact, Trooper Proctor, and you
24 supervising him, y'all were conducting the
25 investigation, right?

1 A Our office was conducting the investigation.

2 Q So did you find it unusual or suspicious in
3 any way that the chief of police for the conflicted
4 Canton P.D. was the person driving by 34 Fairview,
5 looking for evidence?

6 MR. LALLY: Objection.

7 THE COURT: Can you answer that question,
8 Sergeant?

9 THE WITNESS: He would have to repeat it.

10 There's just so much, I can't --

11 BY MR. JACKSON:

12 Q It was a little wordy. I'll try it again.
13 Did you find that suspicious?

14 A Which part? You have to repeat the whole
15 thing.

16 Q That Chief Berkowitz from the conflicted
17 Canton P.D. was at 34 Fairview looking for evidence?

18 A The way you pose the question, I did not find
19 it suspicious at all. He's the chief of police in the
20 town where he works, and he's driving down the street.
21 I mean, that's not suspicious.

22 Q With a conflict of interest on the very case
23 that he's driving by?

24 MR. LALLY: Objection.

25 THE COURT: Sustained.

1 BY MR. JACKSON:

2 Q You certainly knew as a supervisor over the
3 case officer that any involvement by Canton Police
4 Department, given the fact that there is a potential
5 conflict, any involvement by them could compromise your
6 otherwise clean investigation? You knew that, right?

7 A Not necessarily, no.

8 Q Did Chief Berkowitz disclose to you that
9 morning on February 4th that he had been communicating
10 with Brian Higgins and Brian Albert, two witnesses on
11 your case, that morning?

12 MR. LALLY: Objection.

13 THE COURT: Sustained.

14 BY MR. JACKSON:

15 Q If you knew information about communication
16 between and among Canton P.D. and your witnesses, you
17 would find that inappropriate, would you not?

18 MR. LALLY: Objection.

19 THE COURT: Sustained.

20 BY MR. JACKSON:

21 Q You returned to the scene on February 10th, is
22 that right, to conduct another search, you said?

23 A I was present on the 10th. Yes.

24 Q Who dispatched you back or did anybody
25 dispatch you back to that location on February 10th?

1 How did you end up there is a better way to ask it.

2 A February 10th, just like previous days, we
3 made plans to go to the location in the morning and the
4 afternoon, drive by. It was on my way to work and to
5 home. So I traveled that route on purpose. And, as
6 evidence revealed itself, due to the natural melting of
7 the snow, we would stop and collect the visible
8 evidence.

9 Q You believed at this point, sir, that whatever
10 you might collect at the scene would obviously be
11 important, correct?

12 A Anything we collected that had evidentiary
13 value or presented itself as somehow related to the
14 crime or the incident would be collected.

15 Q And it would be important to the
16 investigation, right? You'd treat it as important?

17 A We'd treat it as important, yes.

18 Q So my question is, was -- especially as it
19 relates to the February 10th search where there were
20 multiple items found, did you seek to have CSSS come
21 out and actually mark with GPS coordinates or measure
22 with cross-coordinates exactly where each item of
23 evidence was found?

24
25 A We did not do that. We had collected so much

1 evidence already and so much has been documented at
2 that point that we did not contact crime scene services
3 to come back out and photograph more shards of glass
4 and plastic. We simply collected it for processing.

5 Q So the location of each one of those items was
6 not of that great importance to you at least at that
7 time?

8 A It was of great importance as to the fact that
9 it was located in the vicinity where the victim was
10 found and in the vicinity of other items located of the
11 same characteristic, shape, size and color.

12 Q So that's my question, Sergeant. What does
13 vicinity mean?

14 A In the area.

15 Q Okay. What does area mean?

16 A It's a location, specific location.

17 Q Okay. Are we talking about -- because we can
18 do this all day, I guess. Are we talking about an area
19 of five feet or an area of 50 feet?

20 A Based on where the items were recovered, we
21 are talking about an area approximately of 30 square
22 feet between the roadway, into the grass.

23 Q We saw photographs, Sergeant, of items that
24 were butted up against a fire hydrant in one instance,
25 correct? Is that "yes"?

1 A That's correct. Yes.

2 Q A drinking straw that's out in the road,
3 correct?

4 A That's correct.

5 Q Another shard of glass that's in the grass,
6 closer to the flagpole, correct?

7 A Correct.

8 Q A hat that's under the snow adjacent to the
9 left side of the flagpole, correct? I'm sorry. It
10 wasn't. It was closer to the electrical box, wasn't
11 it?

12 A No. The pictures documented where the hat
13 was. It was to the right of the flagpole.

14 Q So these shards of glass, the point I'm asking
15 is, did you seek to use basic cross-coordinates,
16 measurements, from something that you know is a known
17 object like, for instance, I don't know, a flagpole or
18 a fire hydrant, 27 inches to the north and a foot and a
19 half to the south of those two known points? That
20 would give you a cross-coordinate, correct?

21 A It would document the exact location.
22 Correct.

23 Q And you did not do that with any of these
24 items, correct?

25 A The items that were not photographed were not

1 also GPS located. But were within the same vicinity of
2 where the other items were collected.

3 Q But, again, now we are back to the same
4 question. Your word for vicinity might be different
5 than my word for vicinity, right?

6 MR. LALLY: Objection.

7 THE COURT: Sustained.

8 BY MR. JACKSON:

9 Q When you recover these items or any other
10 items, it's obviously important to memorialize on the
11 evidence bag or in some other way exactly where they
12 are found, who found them, the date and time, et
13 cetera, correct?

14 A We do the best we can to document all known
15 information on each evidence item bag at the time.

16 Q In terms of the February 10th search, I want
17 to just ask you a couple of quick questions about that
18 evidence bag. Did you bag the items into a single
19 evidence bag that you found that day or do you recall?

20 A I would have to see the bag. If you have
21 those available, I'll take a look.

22 MR. JACKSON: Your Honor, with the Court's
23 permission, I think it's Exhibit 310 that was
24 entered into evidence yesterday. I'd like to
25 display that.

1 BY MR. JACKSON:

2 Q You're looking at a photograph of what was
3 previously entered into evidence as 310. Can you see
4 that from where you are at? I don't have the evidence
5 bag with me. So if you don't, I can certainly ask
6 Mr. Bates to enlarge it.

7 A If you can enlarge it, please?

8 MR. JACKSON: Just the portion of the writing.

9 Your Honor, may I approach?

10 THE COURT: Yes.

11 MR. JACKSON: I didn't realize I have a
12 photograph of it.

13 THE COURT: Do you need the lights on,
14 Sergeant?

15 THE WITNESS: Please.

16 BY MR. JACKSON:

17 Q There you go.

18 A Thank you.

19 Q That should be easier.

20 Sir, have you been able to familiarize
21 yourself with that evidence bag?

22 A With the photograph, yes.

23 Q Okay. Thank you. Take a look at that
24 evidence bag. It has the information on it. It has
25 your name as collected by, correct?

1 A Correct.

2 Q The date of collection is February 10th; is
3 that right?

4 A That's what it says, yes.

5 Q Okay. And it indicates multiple pieces of
6 red, black and clear plastic, correct? It actually
7 says six pieces of red, black and clear plastic,
8 correct?

9 A That is correct.

10 Q But that is not an evidence bag that was
11 filled out by you, is it?

12 A I did not fill that bag out.

13 Q As a matter of fact, that's Trooper Proctor's
14 handwriting?

15 A I do not know what Trooper Proctor's
16 handwriting is. I cannot confirm that that's his
17 handwriting.

18 Q But it's not your handwriting?

19 A It is not my handwriting, no.

20 Q So are you aware that this particular bag,
21 that bag that contained those six items of plastic
22 material that you already deemed was incredibly
23 important to the investigation, was never booked into
24 any evidence until March 14th, the date that it was
25 submitted to the crime lab?

1 A I was not aware of that, no.

2 MR. JACKSON: We can take that down,
3 Mr. Bates. If I may approach, Your Honor?

4 THE COURT: Yes.

5 BY MR. JACKSON:

6 Q Did you ever draft or report yourself
7 documenting the recovery of those six items and the
8 other 14 items that you said that you found on the same
9 date, February 10th?

10 A I did not, no.

11 Q Did you leave that, assuming that Trooper
12 Proctor would document that?

13 MR. LALLY: Objection.

14 THE COURT: Sustained.

15 MR. JACKSON: I'll ask it another way if I
16 can.

17 BY MR. JACKSON:

18 Q Did you believe that you didn't need to write
19 a report, Sergeant, because Trooper Proctor would take
20 care of that?

21 A I knew that it would be documented. It was
22 already documented on the actual bag as far as who
23 collected it, when, where and what it was. And a
24 report would eventually be authored on it.

25 Q But the where for all of these very intricate

1 of pieces, the where is left to 34 Fairview on the bag,
2 correct?

3 MR. LALLY: Objection.

4 THE COURT: I'll allow it.

5 BY MR. JACKSON:

6 Q Is that right?

7 A The general vicinity location of the other
8 items collected and documented with photographs was
9 consistent with the same locations this was collected.

10 Q I want to shift gears for just a second.
11 Well, actually, I want to ask one final question about
12 that item.

13 Based on the documentation that you just
14 mentioned that is documented on the bag and if the bag
15 is presented to the crime lab on March 14th, some five
16 weeks later, those items were completely unaccounted
17 for from a log standpoint for the entire time from when
18 they were collected until they were booked at the crime
19 lab, correct?

20 MR. LALLY: Objection.

21 THE COURT: Sustained.

22 BY MR. JACKSON:

23 Q Did you keep possession of those items for
24 those four, five or six weeks?

25 A Are you talking about the items that were just

1 displayed on the screen?

2 Q I am, sir.

3 A I did not.

4 Q Now I'd like to shift gears to a Ring video
5 that you saw yesterday. It's in Exhibit 6, Video
6 No. 153. That may mean nothing to you. It is the
7 5:07 a.m. video of Ms. Read's car pulling out of the
8 One Meadows garage. Do you remember that video?

9 A I do.

10 Q Okay. You indicated yesterday under
11 questioning by Mr. Lally that Ms. Read's car came close
12 to, came in contact with or close to coming in contact
13 with the other vehicle, the Traverse, in the video; is
14 that right?

15 A As I watched the video, I observed the vehicle
16 come near Mr. O'Keefe's car.

17 Q Okay. That's what I want to talk about.

18 MR. JACKSON: With the Court's permission, may
19 we play that video one more time?

20 THE COURT: Okay.

21 MR. JACKSON: Mr. Bates, if you could pull
22 that up and then I'd ask you to pause it. Let me
23 get out of the way.

24 Okay. If you could play that for a quick
25 second and then I'll ask you to pause it.

1 (Whereupon, the video is played.)

2 MR. JACKSON: Pause.

3 (Whereupon, the video is paused.)

4 BY MR. JACKSON:

5 Q I'm just pausing it in the first two or three
6 seconds. Does that appear to be the video that you saw
7 yesterday?

8 A It appears that way, yes.

9 MR. JACKSON: Mr. Bates, if you could enlarge
10 the area around the left rear tire of the Traverse?

11 Q I'm going to ask you, sir, if you'll pay close
12 attention to what's been zoomed and, when the SUV gets
13 close to it, I'm going to pause it and ask you another
14 question.

15 MR. JACKSON: If we could go ahead and play
16 this.

17 (Whereupon, the video is played.)

18 MR. LALLY: Your Honor, I'm going to object to
19 this.

20 THE COURT: So why don't we pause the screen.
21 Take it down, and I'll see you at sidebar.

22 (Whereupon, the video is paused.)

23 (Whereupon, there was a sidebar conference as
24 follows:)

25 THE COURT: What is the objection?

1 MR. LALLY: As far as the enlargement and
2 blowing it up on the screen, he can ask the witness
3 to pay attention to observe the area of the screen,
4 ask if he sees something. But, as far as
5 manipulating the video in this way, I don't think
6 it's appropriate.

7 MR. JACKSON: Your Honor, how many times has
8 the Commonwealth asked Ms. Gilman to enlarge or
9 zoom in on a photo or a video? They do it every --

10 THE COURT: I am going to let him do it. It's
11 unfortunate that the D.A.'s office didn't get
12 better equipment for this, right? I mean, your
13 equipment that Ms. Gilman has does not amplify the
14 way this does. Is there any suggestion that this
15 is modified in any way, Mr. Lally?

16 MR. LALLY: Not that I know of, no.

17 THE COURT: Have you seen this in this form?

18 MR. LALLY: No.

19 THE COURT: Do you want to take a five-minute
20 break and see it?

21 MR. LALLY: No.

22 MR. JACKSON: It is just an enlargement of the
23 exhibits. It's just a zoom.

24 THE COURT: What are you going to do with it?

25 MR. JACKSON: I'm going to play it until the

1 SUV comes in contact with the troopers. It's very
2 obvious when you zoom it and you look at the rear
3 tire.

4 THE COURT: Okay. So you say it fits the
5 Traverse. And then what are you going to do with
6 it?

7 MR. JACKSON: That's it, just ask him if that
8 changes his opinion that it came in contact with or
9 was close to the Traverse.

10 THE COURT: Okay. And you're objecting to
11 that, Mr. Lally?

12 MR. LALLY: I think the video speaks for
13 itself. I don't see why you have to --

14 MR. JACKSON: Mr. Lally shouldn't have asked
15 him the question yesterday. He brought it up.

16 THE COURT: So I'll let you do it one time.

17 MR. JACKSON: Okay.

18 (Whereupon, the sidebar conference concluded.)

19 MR. JACKSON: I'm going to try to situate
20 myself so I'm out of the way. If we could have the
21 lights dimmed, Your Honor?

22 THE COURT: Sure.

23 MR. JACKSON: Thank you. Go ahead and enlarge
24 that rear area of the Traverse.

25 BY MR. JACKSON:

1 Q I am going to ask you to pay special attention
2 to that wheel and any movement that you may or may not
3 see.

4 (Whereupon, the video is played.)

5 MR. JACKSON: Okay. Pause it.

6 (Whereupon, the video is paused.)

7 Q In about the next three seconds, Sergeant, I'm
8 going to ask you to pay special attention to it.

9 (Whereupon, the video is played.)

10 MR. JACKSON: If we could have the lights on.

11 And you can take that down.

12 BY MR. JACKSON:

13 Q Sergeant, were you able to see that video? I
14 know it's not the clearest thing in the world, but were
15 you able to see that video okay?

16 A Yes.

17 Q What did you notice about the rear wheel of
18 the Traverse?

19 A Based on the motion in the shot with the snow
20 falling, it appears that there is movement, but the
21 video speaks for itself.

22 Q What would you assess, based on the movement
23 of the rear wheel of the Traverse about whether or not
24 the two vehicles came in contact with one another?

25 MR. LALLY: Objection.

1 THE COURT: Sustained.

2 MR. JACKSON: May I have just a moment, Your
3 Honor?

4 THE COURT: Yes.

5 MR. JACKSON: May I inquire?

6 THE COURT: Yes.

7 MR. JACKSON: Thank you. I'm trying to use my
8 time wisely, Your Honor.

9 BY MR. JACKSON:

10 Q Yesterday, Sergeant, you were asked about a
11 couple of videos related to the sally port garage. Do
12 you have that in mind?

13 A Yes.

14 Q As a matter of fact, we watched one of them
15 pretty specifically toward the end of the day
16 yesterday. Did you actually -- I want to talk about
17 the one that is the clearer of the two where you slip.
18 Do you remember that one?

19 A If you pull it up, I can --

20 Q I will in just a second.

21 A Okay.

22 Q There was one where Mr. Lally paused it and
23 you were slipping in front of the vehicle?

24 A I don't recall myself slipping, no.

25 Q Okay. Fair enough.

1 A It was icy that day. So if there is
2 documentation of me slipping --

3 Q Fair enough. I didn't mean anything by that
4 other than that was a moment that I thought you might
5 recall to differentiate the videos. It is Exhibit 446,
6 but I don't think that's going to help you. Let's see
7 if I can do this another way.

8 Did you actually personally go to Canton P.D.
9 to retrieve any or all of the videos of the sally port,
10 you, yourself?

11 A I did go to Canton and collect already
12 extracted video.

13 Q Okay.

14 A But it was a portion of video surveillance. I
15 didn't collected all of the video.

16 Q When was the most recent time that you went to
17 Canton to collect a portion of a video?

18 A I don't remember.

19 Q Okay.

20 A I'm sorry.

21 Q Did you review the -- well, let me ask it this
22 way: Did you collect a video that was sought on or
23 about April 23rd, April 24th of this year, meaning just
24 a few weeks ago?

25 A Did I collect it?

1 Q Correct.

2 A I did not collect that video.

3 Q Okay. You're aware that the video that you
4 saw yesterday was, in fact, collected after the trial
5 started in April of 2024?

6 MR. LALLY: Objection.

7 THE COURT: Sustained.

8 BY MR. JACKSON:

9 Q Are you aware of when that video that we saw
10 yesterday was collected?

11 MR. LALLY: Objection.

12 THE COURT: I'll allow it.

13 THE WITNESS: I am not aware.

14 BY MR. JACKSON:

15 Q Okay. Was yesterday the first time you had
16 seen that video?

17 A No.

18 Q When had you seen that video previously?

19 A A couple of weeks ago.

20 Q Okay. What were the circumstances in which
21 you saw that video?

22 MR. LALLY: Objection.

23 THE COURT: Sustained.

24 BY MR. JACKSON:

25 Q Did you have a meeting with the D.A.?

1 MR. LALLY: Objection.

2 THE COURT: Sustained.

3 BY MR. JACKSON:

4 Q Did you ever have any kind of communication
5 with Mr. Lally about your testimony?

6 MR. LALLY: Objection.

7 THE COURT: Sustained.

8 MR. JACKSON: May we approach?

9 THE COURT: Yes.

10 (Whereupon, there was a sidebar conference as
11 follows:)

12 THE COURT: So why don't you put your
13 objection on the record. What are you objecting
14 to?

15 MR. LALLY: Relevancy.

16 THE COURT: Go ahead, Mr. Jackson.

17 MR. JACKSON: I want to find -- I think it's
18 highly relevant when he's seen this, if he's
19 prepped for his testimony, how many conversations
20 he's had with the D.A., what was the subject of the
21 conversation. That's a standard question we've
22 asked many of the witnesses. It's highly relevant
23 to determine whether or not he had been given any
24 guidance about how he should testify or what he is
25 going to be saying. It goes to basic bias in his

1 preparation.

2 THE COURT: You're objecting as to whether he
3 be questioned regarding any bias in his
4 preparation?

5 MR. LALLY: I mean, I never provided any
6 witness with any guidance as far as how to testify.

7 THE COURT: I expect that's what he'd say.
8 Are you objecting to it?

9 MR. LALLY: Again, I just don't see how any of
10 this is relevant.

11 THE COURT: You say it goes to bias?

12 MR. JACKSON: It goes to bias but it also goes
13 to prior statements of witnesses. If he met with
14 Mr. Lally and they discussed his testimony, I'm
15 entitled to that. I should have gotten a report
16 about it, quite frankly. But, short of that --

17 THE COURT: I will give you a little bit of
18 leeway. Don't forget we are leaving at noon today.

19 MR. JACKSON: I've skipped over about two-
20 thirds of my --

21 THE COURT: I am not asking you to cut your
22 cross-examination short.

23 MR. JACKSON: It's on me. It's on me. Thank
24 you.

25 (Whereupon, the sidebar conference concluded.)

1 MR. JACKSON: May I?

2 THE COURT: Yes.

3 BY MR. JACKSON:

4 Q Sergeant, did you have any meetings or
5 communications with Mr. Lally in anticipation of your
6 testimony?

7 A Yes.

8 Q When was that?

9 A It was about two weeks ago and then last week,
10 I believe.

11 Q And what was discussed generally?

12 A Generally, we discussed portions of the case
13 that I would be presenting.

14 Q Did you write a report about your
15 communications with Mr. Lally?

16 A No, I did not.

17 Q Okay. Were you shown any of the videos that
18 you've seen here in anticipation of your testimony?

19 A Not during the first meeting. I did review a
20 video during the second time.

21 Q Okay. And that video that you did see the
22 second time was the interior video of the sally port
23 that we saw yesterday, correct?

24 A I'm just trying to remember exactly what video
25 I saw. I had reviewed videos outside of our meetings.

1 So I don't remember exactly what video Mr. Lally showed
2 me.

3 Q But you do recall seeing the video that you
4 saw yesterday, the sort of clear one that has the crime
5 scene tape being put up and all that? You have seen
6 that one before?

7 A Yes.

8 Q And that was with Mr. Lally, correct?

9 A That is not correct because I do not recall
10 when I saw that video or what video I saw with
11 Mr. Lally.

12 Q I see. All right. I'd like to talk about
13 that Exhibit 446 for a second, and then I'll show it to
14 you.

15 You indicated that the video that you -- all
16 the videos, everything that you saw yesterday, was true
17 and accurate, correct, based on your memory of the
18 events that were memorialized in the video?

19 A The video captures events taking place in
20 accurate fashion, yes.

21 Q In an accurate fashion. All right. That's
22 what I wanted to find out.

23 And, after you watched the video, I think you
24 were asked by Mr. Lally does the video show you or
25 Trooper Proctor having access to or messing with in any

1 way that right rear taillight in any fashion. And you
2 said, never.

3 A I was asked if at any point Trooper Proctor
4 and I had come into contact, I believe, or touched the
5 vehicle and that portion of the vehicle. And I said,
6 never, we never touched the vehicle prior to it being
7 properly processed with a search warrant.

8 Q And that was the -- specifically, his question
9 was to, and his answer was to, the right rear portion
10 of the vehicle, right? The right rear taillight?

11 A The right rear damaged taillight.

12 MR. JACKSON: With the Court's permission, I'd
13 like to play a portion of Exhibit 446.

14 THE COURT: All right.

15 MR. JACKSON: Before we begin playing it,
16 Mr. Bates, if you wouldn't mind, may I inquire of
17 the witness, Your Honor, just to lay a foundation?

18 THE COURT: Yes.

19 BY MR. JACKSON:

20 Q Sergeant, do you recognize this as being the
21 video that we saw yesterday?

22 A It does look accurate, yes.

23 Q Okay. I just wanted to make sure we were on
24 the same page. This is 446, just so you have it in
25 mind if I reference that.

1 MR. JACKSON: Mr. Bates, if you could play
2 that and I think to runtime 1:20.
3 (Whereupon, the video is played.)

4 MR. JACKSON: Pause it.
5 (Whereupon, the video is paused.)

6 BY MR. JACKSON:

7 Q Do you recognize that as the video we saw
8 yesterday?

9 A Yes, I do.

10 MR. JACKSON: Very briefly, if you could move
11 to time of day to 5:37:05.

12 With the Court's permission, can we play this
13 point?

14 THE COURT: Yes.

15 (Whereupon, the video is played.)

16 BY MR. JACKSON:

17 Q All right. That shows the vehicle coming into
18 the sally port. And we are looking at which side of
19 the vehicle?

20 A So that is the driver's side of the vehicle.
21 What that video depicts is a mirror collection.
22 Although mirrors are accurate representation of what
23 you are seeing, it's just inverted. So that is the
24 driver's side of the vehicle. I do not know why it is
25 inverted, but that's the way it was presented,

1 collected and presented, from Canton Police.

2 Q Can you see a timestamp or a time and date
3 stamp on the bottom of that? It's in blue.

4 A I cannot, no.

5 Q Okay. Does it appear that that time and date
6 stamp, if you can't read every letter on it, that that
7 is in correct order? In other words, that's not
8 inverted?

9 A I cannot read it, no.

10 MR. JACKSON: Let's go and play this for a
11 second.

12 (Whereupon, the video is played.)

13 BY MR. JACKSON:

14 Q Who is that that just got out of the car?

15 A I do not know. I think that's the tow truck
16 driver. He would have the only access to the vehicle.
17 We did not touch the vehicle.

18 Q Who's that on the left?

19 A I missed it. I was looking down at the laser
20 pointer. I do not know. I know for a fact I'm the
21 gentleman that's wearing a dark, olive drab state
22 police baseball-style hat; and Trooper Mike Proctor is
23 wearing a winter hat.

24 Q Trooper Proctor is wearing what?

25 A A winter hat.

1 MR. JACKSON: Can you back that up just a
2 little bit? That was playing and I didn't realize
3 it was playing while you were talking.

4 Okay. Stop.

5 (Whereupon, the video is paused.)

6 BY MR. JACKSON:

7 Q Yesterday when you testified, you indicated
8 that the two individuals in this scene were you and
9 Trooper Proctor, correct?

10 A That is not correct. There was two
11 individuals in the rear of the vehicle I shined my
12 light to. That was me and Trooper Proctor.

13 Q Do you see Trooper Proctor toward the back or
14 the rear of the vehicle there?

15 A I can't tell because of the -- where the head
16 is. I just know that Trooper Proctor was wearing a
17 black hat.

18 Q Which the person in the video to the left to
19 the rear of the car is wearing a black hat, correct?

20 A I can't tell. I don't want to be locked into
21 a statement where later on you show me that it's
22 somebody else magically. I can't testify to that.

23 Q There's no magic about this. It's your
24 testimony. I'm just asking you what you see.

25 A I don't see that, no.

1 MR. JACKSON: Let's go ahead and play it at
2 this point.

3 (Whereupon, the video is played.)

4 MR. JACKSON: Pause.

5 Q Do you see the person toward the back of the
6 vehicle walking toward the opposite side of the SUV?

7 A I do.

8 Q What area does he appear to be going to?

9 A He appears to be going towards the rear
10 passenger side of the vehicle, although it does not
11 appear so because the video is inverted, a mirror
12 image. That's where he's going.

13 Q And, Sergeant Bukhenik, you testified for at
14 least a half an hour about this video yesterday,
15 correct?

16 A I'm sorry. It was a long day. I don't know
17 the timing of how long I testified.

18 Q You significantly testified about this video
19 yesterday; did you not?

20 A I testified about this video.

21 Q And you testified that it was true and
22 accurate, correct?

23 A Correct.

24 Q And you testified it was reflective of your
25 observations of what was happening in that sally port

1 that evening, correct?

2 A I testified that this is an accurate scene and
3 collection of video evidence from the sally port.

4 Q And, as that truck sits in that sally port
5 just like this, it appears from all perspective that
6 what we are looking at is the passenger side of the
7 car, and that right rear taillight is right there,
8 shining in our face, correct, from this perspective?

9 A I'm sorry. Can you repeat the question?

10 Q From this perspective, from the perspective
11 that the jurors are looking at, from all indications,
12 that would appear to be the right side of the truck,
13 the passenger side of the truck. And that taillight
14 that you can see is the right rear taillight from this
15 perspective, correct?

16 A The way it presents itself, yes.

17 Q And yesterday during the entirety of your
18 questioning by Mr. Lally, not once did you mention that
19 this video is actually completely inverted, correct?

20 A I did not, no.

21 Q Mr. Lally didn't ask you if it was inverted,
22 correct?

23 A That's correct.

24 Q And, if I hadn't gotten up here and begun
25 questioning you, that would be left uncorrected,

1 correct?

2 MR. LALLY: Objection.

3 THE COURT: Sustained.

4 BY MR. JACKSON:

5 Q The person with the winter cap appears to walk
6 directly to what ultimately should be the right rear
7 taillight of this car, correct?

8 A That's the vicinity, yes.

9 MR. JACKSON: Okay. Let's go ahead and play
10 this.

11 (Whereupon, the video is played.)

12 MR. JACKSON: Pause it.

13 Q I'd like you to pay attention to the right
14 rear of this car. And I know we are completely
15 backward. But at the far corner of the car, do you see
16 a person's head there?

17 A It appears as if someone is still there.

18 Q And that person is located at or near what
19 portion of the car?

20 A In real life or as it's depicted?

21 Q Is the person the -- in real life near the
22 right rear taillight of the car?

23 A Yes.

24 Q As a matter of fact, standing there, hovering
25 around there, correct?

1 A We don't know the distance that they are in
2 proximity to the actual vehicle. We just know that
3 they are behind the vehicle.

4 Q Well, it looks like it's pretty close, doesn't
5 it, Sergeant?

6 MR. LALLY: Objection.

7 THE COURT: Sustained.

8 BY MR. JACKSON:

9 Q Doesn't that look like he's in close proximity
10 to the right rear taillight?

11 A As I said, I can't tell how far away he is
12 from the vehicle.

13 Q His head is right there, sir. You can't tell
14 that he's right next to the right rear taillight?

15 MR. LALLY: Objection.

16 THE COURT: Sustained.

17 BY MR. JACKSON:

18 Q All right. I want you to pay attention to
19 what that person does as soon as the other person comes
20 out from behind that car. See if you see any movement.

21 (Whereupon, the video is played.)

22 MR. JACKSON: Stop it.

23 (Whereupon, the video is paused.)

24 BY MR. JACKSON:

25 Q Did you see that person move?

1 A I saw movement in the frame, yes.

2 Q Right when the other person is in eyesight of
3 the person toward the right rear, correct?

4 A I mean, the video speaks for itself. I --

5 Q Yeah, it does.

6 MR. LALLY: Objection.

7 THE COURT: The objection is sustained. No
8 commenting, Mr. Jackson.

9 MR. JACKSON: Yes, Your Honor.

10 I am going to ask Mr. Bates to back it up
11 because there is one other issue I want you to pay
12 attention to if you can right at this moment or
13 right before this moment and, that is, the
14 timestamp. Back it up maybe 10 seconds. Right
15 about there. Don't play it yet.

16 BY MR. JACKSON:

17 Q Instead of paying attention to the
18 individuals, I'm going to ask you, can you see --

19 MR. JACKSON: May I approach the screen, Your
20 Honor?

21 THE COURT: Yes.

22 BY MR. JACKSON:

23 Q Can you see the timestamp at 5:37:37 p.m.?
24 Can you see that from where you're at?

25 A No, I cannot.

1 Q Me, neither. That's why I had to walk up to
2 it.

3 MR. JACKSON: Let's play it for about 10
4 seconds.

5 (Whereupon, the video is played.)

6 MR. JACKSON: Pause it.

7 BY MR. JACKSON:

8 Q Did you see another person just appear toward
9 the rear end of the car?

10 A There was a fog of some sorts. It did appear
11 as if a person was actually in -- there was two people
12 back there and two people walked away or one person
13 walked away.

14 Q And, in fact, the timestamp jumped to 5:38:01,
15 correct?

16 A I cannot see the timestamp, sir.

17 Q Okay. Did it appear that there was an anomaly
18 and there was a portion of that video that was deleted
19 or it's missing? Not deleted but just missing.

20 MR. LALLY: Objection.

21 THE COURT: Can you tell that? Does it appear
22 that way to you, Sergeant?

23 THE WITNESS: No, Your Honor. I cannot tell
24 what is happening with the video.

25 BY MR. JACKSON:

1 Q If you take a look, a close look, there is a
2 classic police car in that sally port, correct?

3 A There is an antique vehicle there, yes. Yes.

4 Q If you take a close look at the trunk of that
5 vehicle, do you see the word "police"?

6 A Yes. I believe I can read that. Yes.

7 Q And it's backward, correct?

8 A It is mirrored. Correct.

9 Q That's a good indication that this is a
10 inverted video, right?

11 A It appears that way, yes.

12 MR. JACKSON: And, if we were to fast forward
13 at 5:42 -- about another 20 seconds, Mr. Bates.
14 There you go. If you could just play it at this
15 point.

16 (Whereupon, the video is played.)

17 MR. JACKSON: Pause it.

18 (Whereupon, the video is paused.)

19 Q Do you see the sally port garage --

20 A Yes.

21 Q Do you see a number on the garage?

22 A I do.

23 Q Is that correct?

24 A What is correct?

25 Q Does the number appear correct? Is that how

1 you make a "4"?

2 A No. That number is in the mirror image. Yes.

3 Q Okay. I just wanted to make the point.
4 Everything in this video is completely backward,
5 correct?

6 A It's not backward. It's mirrored, reversed.
7 You can look yourself in the mirror in the morning, and
8 you still see your own face. It's not backwards.

9 Q But my mirror image is not an accurate
10 depiction of who I am. My actual physical appearance
11 is who I am, correct?

12 MR. LALLY: Objection.

13 THE COURT: Sustained.

14 BY MR. JACKSON:

15 Q A mirror image, Sergeant, is not an accurate
16 video of this, is it?

17 MR. LALLY: Objection.

18 BY MR. JACKSON:

19 Q It's a mirror image by definition?

20 THE COURT: Sustained. Ask it differently,
21 Mr. Jackson.

22 MR. JACKSON: Your Honor, thank you. I don't
23 think I need to.

24 I would like to mark -- I have a thumb drive
25 that I'd like to have marked with the Court's

1 permission.

2 THE COURT: Mr. Lally, do you know what's on
3 this thumb drive without you telling us?

4 MR. LALLY: I do not.

5 MR. JACKSON: If we can approach and I can
6 certainly bring it up.

7 THE COURT: We are trying to wrap up our
8 morning. It's marked for identification.
9 (Whereupon, thumb drive with video was entered and
10 marked Exhibit "XX" for Identification.)

11 MR. JACKSON: If I may, Your Honor, I'd like
12 to play the first 10 seconds of that video.

13 THE COURT: No. We'll come to sidebar. It's
14 marked for identification, right?

15 MR. JACKSON: It is.

16 THE COURT REPORTER: "XX" for Identification.
17 (Whereupon, there was a sidebar conference as
18 follows:)

19 THE COURT: Why in the world do you think that
20 I would let you play something the Commonwealth has
21 never seen?

22 MR. JACKSON: Because it is a -- we got this
23 last night. We did it last night because we just
24 figured out that this was a completely incorrect
25 video that the Commonwealth introduced. And all I

1 did is I inverted it.

2 THE COURT: Okay. So it doesn't help to say
3 it's incorrect. Tell me what --

4 MR. JACKSON: It is incorrect.

5 THE COURT: Tell me what you did and tell me
6 what you have. So you've got a --

7 MR. JACKSON: I've got the exact same video to
8 the bit and byte, but it's inverted correctly.

9 THE COURT: Okay.

10 MR. JACKSON: It even has the timestamp
11 backward.

12 THE COURT: How long is it?

13 MR. JACKSON: Oh, it's exactly the same amount
14 of time as this, which is maybe five and a half
15 minutes. But I'm not going to play the whole
16 thing.

17 THE COURT: Okay. So you are not going to
18 play any of it until the Commonwealth sees it. So
19 the Commonwealth needs a copy of it. He's going to
20 have to come back. I imagine you've got redirect,
21 right?

22 MR. LALLY: Yes.

23 MR. JACKSON: Your Honor, if I could get this
24 done -- I can tell the Court, as an officer of the
25 Court, I have not, we have not, done anything to

1 this video except the correct way. It's how it
2 should have been in the first place. This is a
3 complete -- it's a complete deception in terms of
4 where everything is. I want the jurors to see that
5 when you reverse it, that is the car in the sally
6 port. I don't have to ask a bunch of questions
7 about it. I want them to see the car in the
8 correct way and one time before two days of this is
9 over.

10 THE COURT: Okay. So if you had given this to
11 the prosecutor this morning, I would have given him
12 time to look at it.

13 Are you objecting?

14 MR. LALLY: I cannot until I see what it is.

15 THE COURT: Okay.

16 MR. JACKSON: If we could take a 30-second
17 break, I could place the 10 seconds that I want to
18 play and then we are done. I'm only going to play
19 10 seconds of this.

20 THE COURT: Do you have redirect of him
21 anyway?

22 MR. LALLY: I do.

23 THE COURT: So we have to come back anyway.

24 MR. LALLY: I think so.

25 THE COURT: All right. So we can do it later

1 with him. If this is the end of -- I understand
2 we've got a day and then the weekend. I understand
3 that.

4 MR. JACKSON: I would just like to get done.
5 There's a closure that I think I'm entitled to.

6 THE COURT: No. I understand. You want to
7 have a big score just before the weekend. It's
8 perfectly understandable. But if you had this last
9 night, coming into this morning, it could have been
10 sent over to the Commonwealth and we could have
11 avoided this. And I understand. So you can either
12 end now without you being done -- I can just call
13 it a day if this is the end of your cross.

14 MR. JACKSON: It is the end of my cross.

15 THE COURT: Okay. So I will just call it a
16 day, give you an opportunity to do this first thing
17 Monday. If there are any objections, I'll hear
18 from the Commonwealth before we even come in and
19 you can end it Monday.

20 MR. JACKSON: Okay. That's fine.

21 THE COURT: I would do the same, actually, if
22 it were reversed. It wouldn't even be a question.

23 All right? Where do we stand for time,
24 because the jurors want to know when we are going
25 to finish? Mr. Lally, when do you think you'll

1 finish?

2 MR. LALLY: I think the same as I said
3 yesterday. You know, ideally, the 17th. But, you
4 know, most likely at some point on the 18th.

5 MR. JACKSON: If we get started on the 18th, I
6 think we'll need five days to do our entire case.

7 THE COURT: Okay. So do you want me to tell
8 them that you expect to finish with the evidence --
9 the 19th is a holiday.

10 MR. JACKSON: It's Juneteenth.

11 MR. YANNETTI: Have you made a decision on the
12 21st?

13 THE COURT: Excuse me?

14 MR. YANNETTI: Have you made a decision on the
15 21st?

16 THE COURT: I had the court officers tell the
17 jurors that -- and I shouldn't be talking about it
18 -- moving another case without the lawyers in that
19 case being here. But I'm seeing if the jurors are
20 available, then I might take the next step on that.

21 So let's say you don't start on the 18th. So
22 if you do 20, 21, 22 -- 20, 21, 24, 25, you'll
23 finish by the 26th?

24 MR. JACKSON: Maybe even the 25th. I'm giving
25 myself an extra day. I think we can get through

1 with pretty decent alacrity.

2 THE COURT: Mr. Lally, are you sure you're
3 going to finish by the 18th?

4 MR. LALLY: Sure? I'm not sure of anything
5 based on the number of witnesses and not knowing
6 cross-examination length and things like that. But
7 I'm relatively confident that we can do that given
8 especially if we're going full days four out of
9 five days next week and then two more full days.
10 We should.

11 Mr. McLaughlin was just going through with me
12 -- I think we have about 12 witnesses left. I
13 think we can get through 12 witnesses in six days.

14 THE COURT: Okay. I think I can safely tell
15 the jury without being more specific now and tell
16 them I'll be more specific next week. But I think
17 I can tell the jury that they will get this case
18 for deliberations the last week in June.

19 MR. JACKSON: Yes. Yes, including closing
20 arguments, the whole thing.

21 THE COURT: They will get it for
22 deliberations.

23 MR. JACKSON: Yes.

24 THE COURT: All right. I am going to send
25 them home.

1 MR. JACKSON: Okay.

2 MR. LALLY: Thank you, Your Honor.

3 (Whereupon, the sidebar conference concluded.)

4 THE COURT: Jurors, I know that you want to
5 know when this case is going to end, and I don't
6 mean that in any negative way.

7 After speaking with the lawyers, I can safely
8 say that you will get this case for your
9 deliberations sometime the last week in June. We
10 will know better next week. We will not be in
11 session next Tuesday. We will go full days,
12 Monday, Wednesday, Thursday, Friday next week. We
13 will not be in session next Tuesday.

14 I have to give you those cautions again.
15 Please do not discuss this case with anyone. Don't
16 do any independent research or investigation into
17 this case. If you happen to see, hear or read
18 anything about this case, please disregard it and
19 let us know. Have a great weekend. We'll see you
20 Monday morning.

21 (Whereupon, the jury is escorted from the courtroom
22 and excused for the day.)

23 THE COURT: All right. So I received a motion
24 from the Commonwealth this morning that I have not
25 had an opportunity to read yet. It's on my desk.

1 I'd like to go spend a few minutes looking at that
2 and come back out at 12:00 o'clock on that.

3 MR. JACKSON: In order for us to argue it?

4 THE COURT: Yes. Do you need --

5 MR. JACKSON: I haven't looked at it, either.
6 We've been busy.

7 THE COURT: All right.

8 MR. JACKSON: Could we do it on Monday?

9 THE COURT: I want to get as much evidence in
10 as we can. We can do it at 8:30 Monday morning.

11 MR. JACKSON: That's fine with me.

12 MR. LALLY: Yes.

13 MR. JACKSON: That's absolutely fine with us,
14 not that it matters what we would like.

15 THE COURT: Can we do it at 8:30 Monday
16 morning?

17 MR. LALLY: If that's what the Court wants,
18 yes.

19 THE COURT: We'll have a hearing on it at
20 8:30, Monday. Are you around tomorrow? Are you
21 around tomorrow?

22 MR. JACKSON: Oh, am I? Yes. Absolutely.

23 THE COURT: Do you want to do it tomorrow
24 morning?

25 MR. LALLY: If I have a preference, I would

1 say Monday.

2 THE COURT: All right. We'll do it on Monday
3 morning at 8:30. And, if you want to put something
4 in writing, just email it.

5 MR. JACKSON: Will do. Thank you, Your Honor.
6 I appreciate it.

7 THE COURT: See you then.
8 (Whereupon, the Court adjourned.)
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C E R T I F I C A T E

I, Paula M. Mills, retired certified court reporter, do hereby certify that the foregoing pages, page 27-3 to 27-125, is a true and accurate transcription of the voice recording in the aforementioned matter to the best of my skill and ability.

This, the 23rd day of December, 2024.

\s\ Paula M. Mills

Paula M. Mills

Retired Certified Court Reporter
and Court Transcriptionist

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